



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>

Duer

A Discourse on the Life, Character, and Public Services of
James Kent

US 15681.17.5



HARVARD
COLLEGE
LIBRARY





⊙

A

DISCOURSE

ON THE

LIFE, CHARACTER, AND PUBLIC SERVICES

OF

JAMES KENT,

LATE CHANCELLOR OF THE STATE OF NEW-YORK;

DELIVERED BY REQUEST.

BEFORE THE JUDICIARY AND BAR OF THE CITY AND STATE
OF NEW-YORK, APRIL 12, 1848.

BY

JOHN DUER.

"Jam nulla perinde re ad virtutem inflammescimus, ut eorum quos admiramus exempli, maximeque illis-tribus, ac domesticis. Natura fit ut quisque limitibus exemplis acius tangatur, veluti majorum nostrorum, affinium, preceptorum et eorum quibuscum nobis vel patria, vel ordo, vel professio communis sit."—ERASMUS.

NEW-YORK:
D. APPLETON & COMPANY, 200 BROADWAY,
PHILADELPHIA:
GEO. S. APPLETON, 148 CHESNUT-STREET.

M DCCC XLVIII.

IMPORTANT NEW LAW BOOKS,
Published by D. Appleton & Company, 200 Broadway, N. Y.

I.
A DIGEST
OF
**THE DECISIONS OF THE SUPREME COURT OF
THE UNITED STATES,**
FROM ITS ORGANIZATION TO THE PRESENT TIME.

BY JAMES P. HOLCOMBE,
EDITOR OF "SMITH'S MERCANTILE LAW," "LEADING CASES," ETC.

One volume, large 8vo, of 678 pages. Price \$6.

"The present volume contains a digest of all the decisions of the Supreme Court of the United States, from its organization to the present time; embracing the reports of Dallas, Cranch, Wheaton, Peters, and Howard. The compiler has not confined himself, in the preparation of the work, to a dry and meagre statement of the points of law decided by the court in the different cases, but has sought to enhance its practical value, by embodying with the digest of each decision, such a portion of the facts of the case and the reasoning of the court, as was necessary to its complete elucidation. As the result of this system, the work embraces, not only the judgments of the court, but the great body of the dicta of its judges, which, though not absolute authority, command respect and deserve attention. These have been given, in general, in the language of the court itself. To bring so large an amount of matter within the compass of a single volume, he has been compelled to avoid all repetition of decisions which might seem equally appropriate to various titles; but that this circumstance may occasion no inconvenience to the student, he has prepared a copious index of the entire contents of the work, by a reference to which the various places in which any subject has been treated may be discovered at a glance. Where, as is often the case, the same point has been frequently settled by the court, the different cases have been grouped together in a single reference.

"The volume is submitted to the indulgence of the profession, in the hope that it will diffuse a knowledge of the decisions of the court, and facilitate their examination."—*Preface.*

OPINIONS OF THE WORK.

From Hon. Levi Woodbury, Associate Judge of the United States Supreme Court.

"I have taken much pleasure in examining the Digest of the Decisions of the Supreme Court of the United States, by J. P. Holcombe, Esq., which you have been so kind as to place in my hands.

"The arrangement of the matter seems to be clear. The points in the cases are justly discriminated; and the references, so far as tested, appear accurate.

"As a compact and convenient index to near fifty volumes of reports, it must prove very useful to the profession.

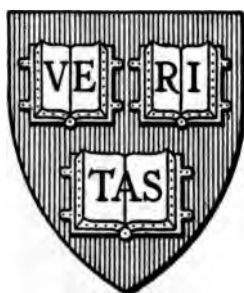
Respectfully,
LEVI WOODBURY."

From Hon. David B. Ogden, of New-York.

"I have received a copy of Mr. Holcombe's Digest of Cases in the Supreme Court of the United States. I have been able to give the volume but a very cursory examination. The plan adopted by Mr. Holcombe in making his Digest is an excellent one, and as far as I have been able to examine it, he has pursued it with great fidelity. I feel no hesitation in saying, that in my opinion this Digest will be found extremely useful by the gentlemen of the profession.

DAVID B. OGDEN."

US 15681.17.5



HARVARD
COLLEGE
LIBRARY

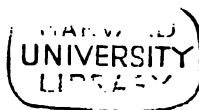




~~17362.21~~
US 15681.17.5

1852, June 4.

Gift of
Mrs. Sarah Campbell,
of Cambridge.



ENTERED, according to Act of Congress, in the year 1848,
By D. APPLETON & COMPANY,
In the Clerk's Office of the District Court for the Southern District of New-York.

DISCOURSE.

Gentlemen of the Judiciary and of the Bar :

HAVING accepted the invitation of a Committee of the Bar of this City to deliver a discourse on the life, character, and public services of the late Chancellor Kent, it is with feelings of no ordinary solicitude, that I now proceed to the discharge of that important and responsible duty. The discourse that I have prepared—it is with no false modesty I say it—falls far short of the standard I had proposed to myself, and wished and strove to attain; but its defects, whatever they may be, are certainly not the result of indifference or of negligence. I have felt, and trust shall never cease to feel, a sincere and profound interest in the subject I have undertaken to treat; and I can truly say, that no efforts on my part have been wanting to render its treatment, in a measure, worthy of the fame of the deceased, and of the approbation of those who knew and have survived him. I add, that although the discourse to which your attention is invited, may be found to exhibit a very imperfect representation of the mind,

character, and public services of the deceased, it fortunately happens, that this imperfection cannot possibly impair your own estimate, or the public estimate, of his real merits. To many, perhaps to most of you, he was personally known, and he is known to you all by his works ; and should I fail to award to him that full measure of gratitude and praise, to which you know he is entitled, your own recollections and your own feelings, will be prompt to correct the error and supply the deficiency.

The plan of this discourse shall be stated in few words ; the design is to place before you in a continuous narrative, the principal incidents in the life of the deceased, and to interpose from time to time such suitable reflections as have occurred to me, especially in regard to the nature and value of his judicial labors, and to the merits and influence of his juridical writings. In one respect, I shall depart from a course that is usually followed. I shall not attempt any general description of the intellectual and moral qualities, habits and attainments of the deceased. I shall not attempt to exhibit his character in an elaborate and formal delineation. His character, I trust, will be unfolded and fully developed in the narrative that is to be given ; and I shall therefore leave you to draw your own conclusions from the facts that are to be stated, without attempting to guide or direct your judgment by any observations, except such as the narrative itself, as we proceed, shall naturally suggest.

James Kent was born on the 31st of July, 1763, in the Highlands of the Hudson of this State, but near the borders of Connecticut. He was born in the town of Fredericks, then a part of the county of Dutchess, but now of the county of Putnam. He was the eldest son of his parents, who, both from their characters and their station in life, were highly respectable, and whose circumstances, although far from affluent, were independent. His father was a man of liberal education and cultivated mind, and like his own father, the Rev. Elisha Kent, and his son, the subject of our discourse, was a graduate of Yale College. He had been admitted to the Bar, and although at the time of the birth of his eldest son, he cultivated a farm, he had not then wholly relinquished the practice of his profession. At a later period of his life, he removed to the county of Rensselaer, in which he held for some years the office of Surrogate. He died in 1794, not at a very advanced age, at the house of his son in this city.

It is not my intention to dwell minutely on the early years of the deceased. It may be doubted whether the incidents connected with this period of his life, however interesting in themselves, are exactly suited to a discourse like the present; and in addition to this doubt, there are other motives that would lead me to forbear from their introduction. I have reason to believe, and think I may venture to announce, that a full memoir of the life of the deceased—a biography such as the public has a right to claim and expect—

will be prepared and, in due season, given to the world by the son, who by his abilities and learning, his sound judgment and cultivated taste, as well as by his intimate knowledge of the subject, and his sentiments of filial veneration and love, is admirably fitted to accomplish the task—a task that he deems, and justly deems, a sacred duty. With his performance of this duty, it is plain that I ought not to interfere beyond the limits of that necessity that the very nature of this discourse imposes. Hence, without entering into details that may be eminently proper and no doubt will be found highly interesting in a future biography, I shall confine my narrative, as already intimated, to the prominent facts and leading incidents in the life of the deceased.

There are, however, some circumstances connected with the position of the deceased in early life, to which, as illustrative of his character, it is proper I should advert. It was in a very beautiful and romantic country that his parents lived, in a rich and secluded valley, surrounded by mountains, varied in shape and elevation, and the family dwelling was situated on or near the banks of the noble stream that perseverance, wealth and science have made our own—a stream then obscure and almost nameless, now the far-famed Croton. In his conversation, the deceased not unfrequently recurred to these scenes of his youth, in terms that plainly showed how strongly they had affected his imagination and were endeared to his memory; nor could it be doubted by those who intimately knew

him, that the scenes and images thus impressed on his mind, had contributed, in no slight degree, to form those dispositions that were inherent and as it were elementary in his character—his native manliness, his frank simplicity, his singular alacrity both of body and of mind, and above all, his vivid admiration and intense enjoyment of all the works and beauties of nature, feelings that he retained in all their freshness to the extremest period of his life. An event occurred in his latter years that had a striking effect in recalling to his mind the scenes, and in leading him to dwell upon the incidents, of his youth. I refer to the introduction into this city of the Croton water. Several times within the last three years, when the fountain that adorns the park in front of his late residence was in its fullest action, and the waters of his native river, as if instinct with life and voluntary motion, rose in strength and majesty before him, several times have I known him approach the windows of his library, in which we were then sitting, and there break forth into warm expressions of admiration and delight. It was evident that the spectacle filled his mind with the most agreeable and varied emotions ; for while it recalled, as he said, the quiet scenes and simple pleasures of his youth, it reminded him of the vast progress that his country had since made in the noblest arts and truest enjoyments of social and civilized life. It was evident at such times that his boyhood and youth, his manhood and age, were all present to his mind and memory ; and it was his high privilege—such had been

the course of his life—it was his high privilege that when thus recalled, he could dwell with feelings of unmingled satisfaction and devout thankfulness on each period of his existence. It is not surprising that at such times, a serene light—the serene light of a serious and chastened joy—spread over his venerable features ; for it was evident that his thoughts and his affections rose in grateful adoration to the Author of his being, as the source and fountain of all the blessings—the many great and peculiar blessings—that throughout the progress and in each stage of his life, it had been his lot to enjoy.

These remarks may seem a digression, but are not. I pass to the early education of the deceased, a topic that I do not mean shall long detain us, not only for the reasons I have already stated, but because I am far from attaching to the subject all the importance it is commonly thought to deserve. Let me not be misunderstood. To the moral training of youth, and to that culture of the intellect which is connected with and dependent on a moral training, too much importance cannot be attached ; but when we look simply at the amount of knowledge that is gained, the influence on the character and destiny of individuals, of the education that schools and colleges bestow, is found to be far less than is usually imagined. It is a certain truth, a truth that deserves to be much more generally understood and felt than it is, that every man who rises to any eminence of distinction in any of the higher departments of human

science or pursuit, is, and *must* be, in a great measure, self-educated—self-educated even in those branches of knowledge that in his transit through academies and colleges he seemed to have acquired; he must owe his success to strenuous and persevering efforts—to habits of self-discipline and self-control—if not begun, yet continued, maintained and strengthened after his education, in the ordinary sense of the term, is finished. Of this truth, the life and the example of the deceased will be seen hereafter to furnish a striking illustration.

In stating the facts relative to his early education, I shall borrow from a memoir of his life that was published a few years since, and is known to have been written by one of his oldest and most confidential friends;* its entire accuracy may therefore be relied on. At the early age of five years he was placed at an English school at Norwalk, in Connecticut, and while there he lived in the family of his maternal grandfather, a respectable physician of that place. In 1772, at the age of nine years, he was transferred to a school at Pawlings, in the county of Dutchess, and at this school he was first taught the rudiments of the Latin language. In 1773 he was placed under the special charge of the Rev. Ebenezer Baldwin, a learned and highly respectable congregational minister, under whom he continued his Latin studies for several years. After the death of Mr. Baldwin he

* William Johnson, Esq. The Memoir is published in the first volume of the National Portrait Gallery.

was under different instructors until he entered the Freshman Class of Yale College, in New Haven, September, 1777. In the different schools through which he passed, he was distinguished by the liveliness of his temper and the quickness of his apprehension—his love of knowledge and his ardor to excel ; but of the particular studies, except Latin, that he followed, and of the exact proficiency that he made, no evidence remains. It is here proper to be stated, that all the families in which he resided during this period of his life, were remarkable for their habits of industry and temperance, frugality, and order. They were all of Puritan descent, and they retained the principles and emulated the piety of their Puritan ancestors. He was, therefore, placed in circumstances eminently favorable to the development and culture of his moral nature ; nor can it be doubted that the impressions then made on his mind by the lessons and by the lives of those whom he venerated and loved, were salutary and permanent. The foundations of his character were deeply laid in the dispositions and habits that he then acquired ; and to the sacred influence that surrounded and nurtured his youth, to the pure atmosphere that he then breathed, the strength, the vigor, the enduring health of his moral constitution may safely be ascribed. We are not to suppose that, during his school life, he was entirely separated from his parents. At frequent intervals he revisited his home, and in later years he often spoke of the alacrity and joy with which, on such occasions, he wandered again through

his native woods and valleys, and roamed again over his native hills.

I regret my inability to furnish all the information it would be desirable to possess in relation to the course of his life and studies after his entrance into college. As the faculties of his mind were now in a process of rapid development, it would be interesting to know who were the authors, and what the books that chiefly engaged his attention, and contributed most to his intellectual growth. We know, in general, that he prosecuted his college studies with diligence and success, that he attained a high rank in his several classes, and a high reputation in the college at large. We also know that his intellectual pursuits were not confined within the narrow circle of his prescribed and necessary studies. He already manifested that love of general reading which soon became, and continued to be throughout his life, a ruling passion, and he had already learned to expatiate with freedom in many of the walks of polite literature. But whether his voluntary studies at this time were desultory and unpurposed, or serious and systematic—whether his object was to strengthen and enrich his intellect, or merely to gratify a transient curiosity, are questions which the information we possess does not enable me to answer.

An event, however, occurred during the second year of his residence in college, that has fortunately been preserved, and, as it seems to me, throws much light on the state of his mind, and the nature

of his pursuits. In July, 1779, the British troops landed at New Haven and took possession of the town, and one consequence of this invasion was that the college for a season was broken up, and the students dispersed. It was during this forced separation from his collegiate studies that the youthful Kent met, for the first time, with the Commentaries of Blackstone, and after reading a few pages became so deeply interested, that he resolved not merely to finish the perusal, but, by a diligent study, to master the contents, and thus appropriate the treasures of wisdom and knowledge he believed they would impart. When we consider, that at this time he had scarcely reached the age of sixteen years, his ability to form and execute such a design is sufficient evidence that his powers of attention had not been dissipated in careless and desultory reading ; but that his mind had previously been trained and disciplined by studies that require and imply the exercise of serious thought. Nor is this all. This slight incident, this seeming accident, determined the course of his life ; and to the impressions then made on the ardent mind of the studious boy, we owe the judge, the chancellor, the unrivalled commentator. The intense delight that he felt in the study of Blackstone disclosed to him the secret of his own powers, and revealed to him, in the clear light of an interior conviction, his future vocation. At the early age of sixteen, his determination was formed to devote himself to the study and profession of the law.

Of the original and very remarkable aptitude of his mind for legal pursuits, this anecdote affords a striking and conclusive proof. It is true that the pure and lucid style of Blackstone lends an unusual attraction to his work ; yet the subjects that he treats are so dry and technical in their nature, so foreign to the aspirations, and so repulsive to the taste of youth, that there are few indeed below the age of manhood by whom the perusal of his Commentaries, instead of being sought as a labor of love, would not be regarded as a task and a toil. When, therefore, a boy of sixteen is found to be studying the Commentaries of Blackstone, not simply with attention, but with interest and delight, we may be certain, that this close and affectionate communion between the mind of the author and of the student can spring only from a similarity of genius ; nor can we be surprised that such a youth, awakened to a consciousness of his own powers and destiny—looking forward to his own future labors and anticipating their success, in the height of his admiration of the author whom he studies, is tempted to exclaim, “Io anche son pittore.”

In September, 1781, James Kent finished his college studies, and received his first degree of bachelor of arts. Within a few weeks thereafter, determined to lose no time in the execution of his favorite purpose, he repaired to the village of Poughkeepsie, and there entered himself as a clerk in the office of Egbert Benson, who at that time was in ex-

tensive practice, and held the high office of Attorney General of the State ; and here for a few minutes the narrative must pause. By me, the name of Egbert Benson cannot be passed with this slight notice. It would be an act of positive injustice, and a violence to my own feelings, to mention his name, without a suitable tribute of respect to his memory—the memory of a man, whom, in his later years, I intimately knew, and to whom, as my father's friend and my own, I was accustomed to look up with an affectionate reverence. He was a man of singular truth and integrity—of great benevolence of heart, of unaffected and cheerful piety, honest in all his purposes, and fixed and steady in their execution. During the war of the Revolution, he embraced with ardor the cause of his country's independence, and in promoting its success he acted a conspicuous and most useful part. Of his disinterestedness and purity, of the excellence of his principles and the soundness of his judgment, no clearer proof can be given, nor in few words a higher eulogy be made, than results from the fact, that he was the chosen, the intimate, and confidential friend of Washington and of Jay. It is certain that his learning and abilities as a lawyer were held by his contemporaries in high esteem ; and it is equally so that he was deeply versed in those branches of the law that previous to the Revolution were the principal object of study, and indeed were then thought to comprise nearly the whole of the science. He had read and studied Plowden and Coke, Lytle-

ton and the Year Books, with great diligence and effect, and in the knowledge and love of Special Pleading, Chief Justice Saunders, or his modern commentator, could hardly have excelled him. It is true that when at a later period of his life he was raised to the Bench of the Supreme Court, his learning and qualifications were not found to be exactly such as the new form and the new exigencies of society then demanded. At that time a knowledge of the law of nations, of equity, and of commercial law, began to be in chief request, and it was not in the school of Vattel, or of Hardwicke, or of Mansfield that he had studied. Hence, although his opinions as a judge were almost invariably sound in their conclusions, yet in their style, and in the course of reasoning that he followed, they clearly proved that he continued to be a lawyer of the olden time ; but a lawyer, such as Coke himself, could he have risen from his grave, would have rejoiced to know and confess as his disciple. In fine, to sum up his character in few words, Egbert Benson was a patriot in the best sense of that abused term—not a flatterer of the people, but a true and ardent lover of his country and its institutions. He was a judicious statesman, a sound lawyer, an incorruptible judge, a sincere Christian. Honor and peace to his memory.

It was under the auspices of this excellent man that our youthful aspirant was introduced into the temple and initiated into the mysteries of legal science ; and such were his devotion and ardor, so rapid

his progress in the knowlege he sought to acquire, and so clear the evidence he gave of a superior mind and character, that the distance which usually separates the instructor from the pupil, was in his instance speedily removed, and before the expiration of his clerkship his master had become his counsellor, associate, and friend. From the love of order that he manifested in all his pursuits, we may be certain that his legal studies were prosecuted upon a regular and systematic plan; and it is much to be regretted, as diminishing in a measure the force and efficacy of his example, that we are ignorant of the plan and method of study that he actually followed. It is certain, however, that his reading was not confined to the books of the common law; and we may confidently affirm that if, at this time, or during his professional life, his studies had been thus limited, he would never have risen to that rank, as a jurist, that he finally attained, nor should we now be assembled to do honor to his memory. At this early period, with the intuition of a superior mind, he had already a clear perception and firm grasp of the important truth, that, in order to understand the law as a science, to be able to investigate the reasons on which it is founded, to trace its adaptation to the wants, and its connection with the true and permanent interests of society, there is a vantage ground, beyond and higher than any system of positive law, that must be ascended, and that this vantage ground is a knowledge, thorough and intimate, of those principles of universal justice and

universal morality, that, in the language of Adam Smith, "ought to run through and be the foundation of the laws in every civilized state."* It was this conviction that led him to an earnest study of the law of Nature and of Nations, and with a courage and perseverance that those only are able to estimate who have made a similar attempt, he encountered and mastered the formidable works of Grotius, and of his Swedish commentator,—reading with pen in hand, and making frequent notes and copious extracts.

His course of life and personal habits, during his clerkship, were exactly such as were demanded by the nature of the work that he had set himself to accomplish. They were in exact conformity to the laws of that higher nature, whose rightful supremacy he deeply felt, and whose dictates he strove to obey. He lived in the constant exercise of a virtuous and manly self-control, and all those passions and appetites that, by their indulgence or excess, enervate and debase our nature, darken the intellect, deaden the affections, and harden the heart, were held by him in the strictest subjection. He was not only absolutely free from those vices that we are accustomed to veil under the gentle phrase of dissipation, but the self-denial that his love and pursuit of excellence led him to practise, excluded him from much intercourse with general so-

* Theory of Moral Sentiments, vol. ii. p. 340. Bacon's *Tractatus de fontibus juris*. D. Stewart's first Dissertation, p. 65.

ciety, and debarred him from any frequent share in its ordinary amusements. The recreation that he needed he found in healthful exercise, and his love of nature supplied to him, in his solitary walks, his truest and highest enjoyments.

In January, 1785, he was admitted to the Bar as an Attorney of the Supreme Court of the State, and immediately thereafter he removed to his native town of Fredericks, with the intention of entering there on the duties and practice of his profession. It is said, by the author of the memoir to which I have already referred, that after a short trial, finding the solitude of the place to be insupportable, he abandoned his design and returned to Poughkeepsie. It is evident, however, that he was not a man to be appalled or wearied by the solitude of a country that he passionately loved, and it is more than probable that it was by other reasons that his change of residence was determined. Shortly after his return to Poughkeepsie he entered into partnership with Mr. Gilbert Livingston, a lawyer of excellent character and high repute in his profession, and in April, 1785, he was united in marriage to Miss Elizabeth Bayley, a lady a few years younger than himself, and who, as his widow, now survives to cherish his memory and deplore his loss. Hitherto I have spoken only in the language of commendation, but it must be confessed that this marriage, according to the estimate of the world, was an act of signal and quite unjustifiable imprudence. He was at this time, in the usual sense of the term, a

poor, a very poor man, and his bride was no richer than himself. His industry and learning, his intellectual powers, and his unblemished character, were all the capital that he possessed, and the only dowry of the bride were her personal charms, her firm principles and excellent judgment, the sweetness of her temper, and the purity of her heart. It is true, then, that they were poor—exceedingly poor—but it is also true that in their poverty they were exceedingly rich ; for, in addition to the riches that I have named, their mutual affection was disinterested and sincere, and their trust in Providence unlimited and unwavering. Hence, let the world think as it may, they had all necessary wealth, and their marriage was not an act of imprudence, but of the truest wisdom. Let the world think as it may, it is to such marriages (I speak it reverently) that the blessing of God is given, and it was a union enriched with his choicest blessings—a union of unclouded harmony and unbroken felicity, that, for a period of more than sixty years, this virtuous and brave couple were destined to enjoy.

His employment in his profession, for some years after his admission to the Bar, was by no means extensive, and it was upon a very narrow income that his wife and himself were constrained and were content to live ; but this delay in the fulfilment of his expectations, this seeming disappointment of his cherished hopes, had no unfavorable influence on his mind or conduct ; the cheerfulness of his temper was unimpaired, his ardor in study unabated, his reso-

lution to excel unrelaxed. His eyes were still fixed, and steadily fixed, on the eminence, that during his novitiate in college had risen before him, in a clear and distinct vision ; and as he knew that this eminence could only be reached by unremitting efforts, the slowness and difficulty of the ascent had no power to discourage him. On the contrary, so far from yielding to the torpor of discontent, or resting satisfied with the knowledge he had already acquired, it was his high resolve that, by redoubling his diligence, he would extend and amplify his stores. In 1787, after he had been admitted as a Counsellor of the Supreme Court, his reflections on the nature of the duties that he would probably be called to discharge, led him to the conviction that his collegiate education had been greatly imperfect and deficient, and this conscious deficiency he determined to supply. He determined, by solitary and persevering labor, to acquire a competent knowledge of the learned languages ; such a knowledge as would enable him to read with facility, and consequently with instruction and delight, those unrivalled masters of thought and style, the classic writers of Greece and Rome. It is a fact that seems incredible, yet it rests upon authority that forbids us to doubt its truth, that during the four years he had passed in Yale College, the only Greek that was read, was the Greek Testament, and the only Latin, portions of Virgil and Horace, and a few select orations of Cicero. It is therefore certain, that at this time his knowledge of Latin, not-

withstanding the liberal education, so called, that he had received, was scarcely more than elementary, and that of classical Greek he was wholly ignorant. Hence it was a real and a great deficiency that he undertook to supply, and that he might accomplish the task, he resolved to make such a division of his time, as would allot to each hour of his day its proper employment ; and this purpose he carried into immediate and full execution. He rose very early, and gave two of his early morning hours to the study of Latin, and two to that of Greek. After breakfast the residue of his morning was devoted to the duties and studies of his profession. Two hours in the afternoon were occupied in the study of French, which he soon learned to read with facility ; and his evenings, so far as the just claims of society would permit, were delightfully and profitably spent in the perusal of the standard authors in our own language. Nor was it merely the great writers in prose that engaged his attention. To the charms of true poetry he was deeply sensible—and of the works of our elder bards, of Shakspeare and Milton, of Dryden and of Pope, he was throughout his life not merely a frequent reader, but diligent student. Throughout his life, he gave to each power and faculty of his mind its due cultivation ; and as by his severer studies his principles of knowledge and of action were fixed, and his powers of reasoning and comprehension strengthened and enlarged, so by his intimacy with the poets of Greece, of Rome, and of England, his taste was disciplined and refined, his

affections purified and elevated, and his imagination nourished and exalted.

We are told that such continued to be the division and employment of his time, until he was raised to the Bench of the Supreme Court, with this exception, that after the lapse of a few years, the increase of his avocations forced him to discontinue his studies in Greek. His intimacy with the Latin classics was maintained, by their frequent perusal, to the close of his life ; and it is hardly necessary to say to an audience like the present, that the fruits of this intimacy are very apparent in his judicial opinions and in his writings.

I pass to another topic. It was during this stage of his professional life—his residence at Poughkeepsie—that he was led to reflect with attention upon the principles of our government, and on the course of policy that, as most conducive to the happiness and glory of his country, ought to be followed in the administration of its affairs. In the summer of 1788, he attended from day to day the sittings of the State Convention, that was at that time assembled in Poughkeepsie to deliberate upon the adoption of the Federal Constitution, and he listened with an intense and almost painful interest to the protracted and momentous debates of that important body—debates, upon the issue of which the fortunes of his country, the fate of a nation, seemed to depend. It is well known that a large majority of the members of this convention were hostile to the proposed Constitution,

and were in a measure pledged to oppose and prevent its adoption. It was to convince this majority of the duty and of the necessity of changing a determination, that was the result of prejudice and imperfect knowledge, that Alexander Hamilton, as a member of the body, exerted his unrivalled powers with an unrivalled effect, and by securing a final vote for the adoption of the Constitution, gained—not for himself and his contemporaries alone, but for us and our posterity—the grandest and most enduring triumph that, in the annals of time, wisdom and eloquence have ever achieved. This is not the language of exaggerated praise; it is the plain expression of a deliberate conviction. When, at this distance of time, removed as we now are from the passions and prejudices that then prevailed, we reflect calmly, and with the light of experience, upon the fatal consequences that must inevitably have followed the rejection of the Federal Constitution, at that time, and by this State, we shall not hesitate to confess that, for preventing these consequences, the greatest of our orators and statesmen deserves also to be remembered and honored, as, next to Washington, the greatest of our public benefactors. The efforts of this illustrious man were regarded by the deceased with sentiments of an unqualified and enthusiastic admiration, and with an entire sympathy he rejoiced in their success. The principles of government and the maxims of policy that, with such strength of reasoning and such impressive eloquence, were then explained and vindicated in his

hearing, sank deeply into his mind, and were adopted and embraced by him as his permanent convictions. He became and declared himself a federalist, and this name, as expressing most clearly and fully the true nature of his political creed, he gloried throughout his life to retain and avow. Nor was he only a distant admirer of Hamilton; it was at this time that their memorable friendship commenced—a friendship by which, for a long series of years, they were intimately united, and which was only dissolved by that lamentable event, that plunged this city in an universal mourning, and struck the minds of us all, who were then living, with consternation and grief. One consequence of their friendship is here proper to be mentioned. Hamilton excelled in the knowledge of French literature, and it was by him that the attention of his younger friend was first directed to the study of the French Jurists—a study from which, as all of us who have read his opinions and writings know, he derived important and lasting benefits.

In April, 1790, and again in April, 1792, he was chosen a member of the House of Assembly from the county of Dutchess, and as the journals of the Assembly show, he was an active and conspicuous member in each session that he attended. His name is frequent on committees, and as the mover of important resolutions. In the session of 1793, the subject that chiefly occupied the attention of the Assembly, was an inquiry into a very singular transaction, by which the public mind of that day was agitated and

excited to an extraordinary degree. I refer to the destruction by the State canvassers of the votes of an entire county (Otsego), an act by which the result in the State of the election for governor was changed, and the candidate of the minority placed in the executive chair. In all the proceedings and discussions in relation to this subject, he evidently acted as the leader of his friends and party, the federal minority of the house. It was by him principally that the examination of the witnesses was conducted, and it was by him that a set of resolutions was moved, asserting the constitutional power of the House to impeach the canvassers, if the result of the inquiry should justify the belief, that they had in fact been guilty of the mal- and corrupt conduct with which they were charged. Nor were his exertions on this subject confined to the legislative hall. He published a series of essays in the newspapers of the day, with the design of exposing more fully to public reprobation the acts that he condemned. It is not without an adequate motive that I have dwelt on this topic—the remarkable ability and energy that he displayed on this occasion, evincing his deep sense of the injustice that had been committed, and the generous indignation of a mind unversed in the arts of politicians, made a strong and most favorable impression on the mind of a person who was destined to be the Governor of the State, and thus laid the foundation of his own success in life. They secured to him permanently the esteem and confidence of John

Jay, to whose discriminating judgment and steady friendship, he owed his elevation to nearly all the offices that he subsequently held.

In April, 1793, he was nominated by his friends in Dutchess county, as a candidate for Congress ; but owing to a sudden revolution in the politics of the county, he failed in the election. His defeat was not only lamented by his friends and party, but was to his own mind a disappointment of cherished hopes, and as such, for a time, was acutely felt ; yet it is not improbable that it ought to be regarded as, emphatically, the fortunate event of his life. Had he been elected to Congress, his success and reputation there would probably have given a new direction to his thoughts, and a different aim to his ambition. The scholar and the jurist might have been sunk in the politician, and we, and the science we profess, have sustained an incalculable loss. A consequence that immediately followed his defeat in the election, was his removal to this city in April, 1793. To this step, he had been previously urged by many of his friends, on the ground that it was in this city alone that his talents and learning would find their due encouragement, and meet their just reward. But it is certain, that had he been elected to Congress, this advice would never have been followed. The first year of his residence in this city was very far from realizing the hopes that led to his removal. He was far from meeting that encouragement in his profession that he had been led to anticipate, and had the right to ex-

pect. The miserable perplexities of a narrow income pressed upon him with unusual severity, and in addition to these causes of anxiety, his wife and himself, shortly after their removal, sustained a very deep affliction in the unexpected death of a favorite child. It was a year of gloom and melancholy, and his mind was so affected, that for a time he seemed to have lost the power of looking beyond and above the dark clouds that surrounded him; yet these clouds were soon to be dispersed, and the light, that was to scatter them, had already risen. Even during this period, when his mind was depressed, and his hopes nearly extinguished, it is not to be doubted, that his reputation as a sound and learned lawyer, an accomplished scholar, and a man of pure and elevated character—a reputation that was the sure harbinger of a brighter day—was rapidly though silently extended. It is a certain proof of this fact, that before the close of the year, in December, 1793, he was chosen Professor of Law in Columbia College, by a board of Trustees who were admirable judges of his qualifications for the office, and who doubtless expected that, by his appointment, they would establish in this city a permanent school of law, that would extend the reputation of the college and advance its general prosperity. He employed several months after his acceptance of the office in a diligent preparation for the discharge of its duties, and in the month of November, 1794, he entered on their performance. It was in this month, that he delivered his first lecture, introductory

to his general course, and indicating the plan he meant to follow ; and during the ensuing winter, he began and completed the general course that he had announced. This introductory lecture was published soon after its delivery, at the request of the Trustees, and its recent perusal enables me to say, that it is a highly instructive and valuable discourse. It is written with great vigor of style and compass of thought, and the views that it unfolds of the true nature and province of the law, and of the advantages to be derived from its study, are judicious, discriminating, and comprehensive. Among other topics, it discusses with signal ability a question of the last importance, which at that time appears not to have been fully settled—namely, whether, under our form of government, the legislature is the sole and ultimate judge of the extent of its own powers, and of the validity of its own acts, or whether it is not the province, and the duty of the Judiciary, when required, to judge of the validity of all legislative acts, by comparing them with the provisions of the Constitution, as the fundamental and paramount law, that the legislature itself is bound to obey. His reflections on this subject are eminently just and profound, and they embody practical truths of permanent value, but to state them at large would transgress the limits it is my duty to observe. His conclusions are, that a Judiciary so organized, as to be wholly exempt from the influence of faction, is a necessary and the only effectual check upon the abuse and excess of legis-

lative power ; that it possesses a rightful authority to declare all such acts of the legislature as conflict with the provisions of the Constitution, to be null and void, and that its firm and independent exercise of this authority is essential to the public security, and the only means by which, under a government like our own—necessarily a government of party—the rights of a minority can be protected against the injustice and violence of a triumphant and vindictive majority. I have no right to dwell in this discourse upon the application of these remarks to our present circumstances ; yet, I cannot forbear to say, that if this independence of the Judiciary is thus essential to preserve the integrity of our Constitution, and to prevent a government of limited powers from being converted into an unlimited and absolute democracy, it is a question that well deserves our serious consideration, whether, as the Judiciary of this State is now organized, its necessary independence now exists. It is a question of no ordinary import, whether a perilous innovation has not been made, by which the safeguards against legislative usurpation and factious violence that our former Constitution provided, have been, in a great measure, if not wholly, abandoned and lost.*

* These remarks have a sole reference to the present organization of our Judiciary considered as a system ; none whatever to the distinguished individuals who have fortunately been selected to carry the system into operation ; but the acknowledged merits of the present judges ought not to blind us to defects that, in the progress of time, will be certain to display themselves.

To return to the subject of our narrative. In the winter of 1796, he delivered a second course of lectures in Columbia College ; but, as the attendance was much less than during the preceding year, and the emoluments of his office quite unequal to the labor that its duties imposed, his lectures, from this time, were discontinued, and in 1798 he resigned his professorship.

In 1795 or '96, (I have not been able to ascertain in which year,) he published in a small volume three lectures, which, as he had delivered them, were preliminary to his course on the common law ; but it must be mentioned as a reproach to the taste and intelligence of the public of that day—a reproach that falls more especially on the members of the Bar—that the sale of the volume was not sufficient to defray the expenses of its publication. In his introductory lecture the subjects of these preliminary dissertations are stated, and it appears that they embraced an examination into the various forms of government that at different periods have prevailed in the world ; a brief political history of the United States from their first imperfect union to the establishment of the Federal Constitution ; and a compendious review of the law of nations as applicable to the several conditions in which a nation may be placed, of peace, war, and neutrality. It would be difficult to mention subjects of more general importance, or in respect to which it would be more interesting to know the views that he then entertained ; but with the statement that has been given

we are forced to be content, for the dissertations themselves, it seems, are irretrievably lost—at least, they have escaped a very diligent research.

In February, 1796, he was appointed by Governor Jay a Master in Chancery, and as the number of masters in this city was then limited to two, the office was lucrative as well as honorable. There is no doubt that, before this time, he was well acquainted with the general principles of equity law; but in the discharge of his duties as master, he acquired a practical knowledge of the business of the court, and of the mode of conducting it, the value of which, in the discharge of his higher duties as Chancellor of the State, he must have constantly experienced.

In the month of November, 1796, he delivered an address before the State Society for the promotion of agriculture, art, and manufactures, at their anniversary meeting in this city. This address was afterwards published, and is now to be found in the first volume of the Transactions of that Society. It is a brief, but animated and impressive discourse, and, both from the importance of the topics it discusses, and the style in which they are treated, it merits an attentive perusal. It contains a rapid and brilliant sketch of the peculiar advantages, natural, civil, and political, of the United States, and especially of our own State. It points out with great sagacity the means of their improvement, and predicts, from their full development, a more rapid and extensive advance in wealth, population, and all other constituent ele-

ments of national greatness that had then been realized in the experience of our race ; yet, glowing as his anticipations are, he lived to witness an increase of national prosperity and power far greater than he had dared to prophesy. His observations in this address render it evident that his mind had been directed to many subjects far without the range of his usual pursuits, and especially that he had studied and embraced the soundest doctrines of political economy. They not only breathe the spirit and feelings of a patriot, but they display throughout the wisdom and sagacity of a philosopher and statesman.

In March, 1797, without any solicitation on his part, or so far as he knew on that of his friends, he was appointed Recorder of this city ; and as the Recorder at that time was not a criminal judge, but was occupied exclusively with civil business, he had no hesitation to accept the office. By the indulgence of Governor Jay he was allowed to hold this office in conjunction with that of Master in Chancery, and he derived from the two a very ample income.

In February, 1798, the office of a Justice of the Supreme Court became vacant, and his immediate nomination to supply the vacancy was a further and most gratifying proof of the entire confidence that John Jay continued to repose in him. The salary of a judge was then moderate, and far less than the income he already enjoyed ; and on this ground many of his prudent friends dissuaded him from accepting the office ; but without hesitation, he rejected the

advice. A high judicial station had long been the object of his just ambition. He knew that it was the station in which the powers of his mind could be exerted and his stores of useful learning be drawn forth, and applied, probably, with most reputation to himself and, certainly, with most advantage to the public. He was convinced that it was the station for which his studies had prepared, and for which Providence designed him, and he understood and obeyed the call. Shortly after his appointment he returned to the village of Poughkeepsie; but in the following year he changed his residence to the city of Albany, where he continued to reside until the termination of his judicial life.

The condition of the Supreme Court, at the time of his accession to the Bench, was probably much the same as it had been, with little variation, from the close of the Revolution. It was not a condition that reflected credit on the jurisprudence of the State; it was not such, as the character and the honor of the State, and the interests of the public demanded. The judges, although not distinguished by any marked superiority, were by no means deficient in learning or ability; but it was in a very imperfect and unsatisfactory manner that their duties were discharged. There was not only a great delay in the determination of causes—a delay not at all excused by the multiplicity of business—but the decisions when pronounced, were far from supplying the requisite proof of a mature consideration. It was evident that they

were not the fruit of that careful and laborious investigation which is essential to the proper discharge of the judicial functions; and the authority they might otherwise have claimed, was greatly impaired by those frequent differences in opinion that are the necessary result of imperfect examination and study. It was seldom that the opinions of the judges, even in the most important cases, were reduced to writing, and as no reports were then published, and no records preserved of the grounds on which their decisions were placed, the cases were numerous in which they had no rules to direct, no precedents to govern them. Of this state of things the inevitable consequences were vacillation, contradictions, confusion, and uncertainty. It is hardly necessary to add, that this defective administration of the law had a most unfavorable influence on the character and pursuits of the Bar; for when cases are slightly examined and rashly decided by the judges, the principal motives for a diligent preparation on the part of counsel, cease to exist. No further observations can be requisite to show that in order to redeem the character of the Bench and of the Bar, and the honor of the State, a great revolution was necessary to be effected; and it was effected, mainly by the efforts and by the example of the man, who at the early age of thirty-five was now raised to the Bench. As soon as his seat was taken, his determination was made that he would examine for himself every case not decided on the hearing; and in such examination would not confine himself to the

cases and authorities cited on the argument, but would embrace in his researches all the law justly applicable to the questions to be determined; and that in each case he would embody the result of his examination in a written opinion. Accordingly at the second term that followed his appointment, in his first meeting for consultation with his brethren, and to their great astonishment, he produced a written opinion in every case that had been reserved for decision, and as these opinions were carefully prepared, were clear in style, forcible in reasoning, and well sustained by a reference to authorities, his brethren, even when they dissented from his conclusions, were in no condition to controvert and oppose them. Hence they at once understood and felt that their own position was materially changed: it was evident that they must either surrender to their junior brother—their junior in station and far their junior in years—the effective control and administration of all the important business of the Court, or if at all solicitous to maintain their own character and dignity, must follow his example. Fortunately for themselves and the public, it was upon the latter course that they resolved. From that time there was a constant and most honorable emulation in the discharge of their weighty duties, and the result was, that in the space of a few years, the Supreme Court of this State was placed on an elevation—an elevation of influence, dignity and authority—that from that day to the present, with a just pride we may affirm, it has

continued to maintain. Whether it will survive the shock of the radical innovation that has recently been made in the constitution of the Court, is a question that time and experience can alone determine. Perhaps there is an inward sentiment that all who have reflected on the subject share, "*Mussat tacito doctrina timore.*" He remained on the Bench of the Supreme Court for a period of sixteen years, and during the greater number of these years, he conducted the proceedings, and presided over the deliberations of the Court, as Chief Justice, to which office he was raised in July, 1804.

Although his brethren on the Bench, during this period, emulated his diligence, and contributed by their efforts to advance or sustain the reputation of the Court, yet it is not to be denied, that the opinions that he delivered were distinguished by qualities that in those of his brethren were rarely displayed, or displayed only in an inferior degree. There was a clearly defined and marked superiority that he was soon admitted to possess, and which he retained, without dispute, during the whole period of his continuance on the Bench. The nature and causes of this pre-eminence are now to be explained. It was not, that all his brethren, during this period, were inferior to him in the native powers of their minds, or in the extent and accuracy of their knowledge of the common law, using the term in its strict and limited sense. In strength and perspicacity of intellect, in the power of close and luminous reasoning, and in a profound know-

ledge of the common law, he was probably equalled by at least two of his associates, Ambrose Spencer and Smith Thompson; but without any disparagement to the fame of these eminent men, it must be said, that neither of them was ever placed on an equality with him in public estimation; nor would either of them have denied, that the extensive reputation and high authority which the decisions of the Supreme Court attained, were principally owing to the recorded opinions that he delivered, and to the impression which they made on the mind of the Bar and of the public, in this State and throughout the Union.

What then are the causes to which his superiority over his brethren—a supremacy thus certain and uncontested—must be attributed? The reply is not difficult. It is virtually contained in the history of his life that has already been given. He had cultivated his mind, in all its powers and faculties—imaginative and moral, as well as purely intellectual—with far greater care and assiduity. His studies had not only been more extensive and various, but more thorough, systematic, and profound. His learning not only embraced a larger compass in its subjects, but was firmer in its principles, and more scientific in its arrangement. From his far greater intimacy with the classic writers of antiquity, and with the great masters of composition in our own language, he derived eminent advantages. To this intimacy, the justness, elevation, and purity of his taste must be

attributed ; it was this intimacy that had endowed him with a command and mastery of language, that enabled him to express his thoughts, on every subject to which they were directed, with such remarkable facility, precision, perspicuity, and force. It was this intimacy that gave choice and variety, and occasionally splendor to his diction, and enriched his style with apt and varied illustrations. In short, it was the intrinsic and peculiar excellence of his opinions, in matter and style, that gave to them a paramount authority, and to their author his wide-spread and rapidly-increasing reputation.

There are certain branches of legal science that his brethren on the Bench had failed to cultivate, in which he excelled. We have seen that, during his clerkship, he adopted the law of nations as a favorite study, and it was a study that he never abandoned. At a later period we have seen that his attention was directed to the Jurists of France, and with the writings of the principal—Domat, Emerigon, Valin, and Pothier—he had become thoroughly conversant : nor is this all. His understanding had assented with a full conviction to the opinion of Sir Mathew Hale, that without a knowledge, and that not slight and superficial, of the Roman law, our own law is never to be comprehended as a science—is never to be fully understood in its grounds and reasons ; and following the advice of Selden, and the example of Hale and Holt and Mansfield, he had devoted, and continued to devote, a considerable portion of his time to this

important study. The Institutes, Pandects, and Code of Justinian, and the writings of the great modern civilians, by whom these immortal monuments of human wisdom, these vast repositories of legal science, have been explained, methodized, and illustrated, became the subjects of his frequent perusal and diligent meditation. Such, in addition to the study of the common law, such were his preliminary studies—such the studies by which he was prepared for his high duties, and, as it were, consecrated to their discharge. It was through this vestibule that he passed a fit Hierophant, into the Temple of Justice. “*Hæc limina victor Alcides subiit.*”

Let it not be said or thought, that his singular proficiency in these branches of learning, was of no practical importance, as bearing on the discharge of his judicial duties. The fact is not so : it is far otherwise. The cases to be found in our Reports are numerous, in which he not merely illustrated and strengthened his reasoning, but was enabled to throw a clear and steady light upon obscure and doubtful questions, by a reference to the opinions of the continental jurists, or to the principles or analogies of the Roman law ; and there are many, in which the rules or maxims that he deduced from these sources were admitted to control the decision of the Court, and were wisely adopted as the basis of its judgment. Of the truth of this assertion, some evidence will hereafter be given. When we speak of the necessity or importance of a diligent study of the civil law of modern

Europe, and of the law of Rome as contained in the monuments of Justinian, sciolists may continue to smile and deride ; but in proportion as our own attention and study shall be directed to these objects, we shall become more and more deeply convinced, that the knowledge thus to be gained, is an acquisition, of which it is hardly possible to exaggerate the utility and value. It is not meant to be asserted that without this knowledge, the duties of counsel and of judges, may not be creditably performed ; but, we may safely affirm, that to the attainment of that excellence, which all should strive to attain, and to the formation of the character of a jurist, in the full sense of the term, it is indispensable. Without this knowledge, Kent and Story would never have risen to the eminence that they gained, and none can hope to rival, or even fully to understand and appreciate, their labors, who shall refuse to imitate their example.

It is understood that from the time he took his seat on the Bench, he not only preserved copies of his own opinions, but took full notes of the decisions in all cases of importance ; but several years elapsed before a reporter to the Court was appointed under authority of law ; and it was not until this reporter entered upon the performance of his duties, that the publication of printed Reports of the decisions, which from that day has been uninterrupted, was regularly commenced. The Reports of Mr. Caines begin only in May Term, 1803, but the chasm which they left, was afterwards supplied by the three volumes of Cases

published by Mr. Johnson and which carry us back to January Term, 1799. Hence, the materials that we possess in the series of our Reports for forming a just and impartial estimate of the judicial character and merits of the deceased, are not merely sufficient, but ample ; and it has seemed to me, that my own duty to his memory and fame would be imperfectly discharged, should I omit, with the aid of these Reports, to direct your attention at least to a few of the more remarkable opinions that were delivered by him during this stage of his judicial career. Undefined and general praise seldom produces an entire conviction or leaves a permanent impression ; and the eulogy that is not specific and sustained by evidence, however moderate and just in itself, is apt to be distrusted, or perhaps rejected, as untrue or extravagant.

In making the selection of cases to which your attention will be invited, I have not confined myself to those in which the opinions that he delivered are distinguished by their learning and research, or by the importance of the principles or doctrine that they establish. As the illustration of his whole judicial character is my object, some of the cases to which I shall refer, it will be seen, are chiefly remarkable, from the evidence that they furnish of the purity and elevation of the motives by which, in the discharge of his duties, he was constantly governed. From the beginning to the close of his judicial career, no traits in his character and no qualities of his mind were more conspicuously displayed, than his quick sensibil-

ity to moral emotions, and the justness, discrimination, and force of his moral perceptions. His love of justice and truth and candor and fair dealing and integrity, and his hatred of injustice and falsehood and duplicity and oppression and fraud, on all fitting occasions, are sure to be manifest ; and the sentiments that he strongly conceived and felt, he never hesitated, when his duty required, strongly to express. It is true that these remarks apply with a peculiar force to his decisions as Chancellor ; but they also apply, in a measure, to some of the common law cases to which I shall refer.

The first of these cases is, that of the *People v. Olcot* (2 *Johns. Cases*, 302). The important question that the case involved was, whether in criminal cases, the Court has power to discharge the jury, when unable to agree, without the consent of the prisoner. The conclusion at which he arrives, after a critical examination and discussion of the cases, is, that on trials for misdemeanors, this power, from reason and necessity, must belong to the Court, whenever the circumstances of the case render its exercise essential to the furtherance of justice ; and the exercise of this power, he contends, so far from impairing the excellence or safety of the trial by jury, adds to its permanence and value. The doctrine that would compel a jury to unanimity, by the pains of hunger and fatigue ; that would extort a verdict from physical exhaustion, to which the consent of the mind was never given, he rejects as absurd and

monstrous, as repugnant to conscience, humanity, and justice.

In the great case of the People v. Croswell (3 *Johns. Cases Ap.*, 363), he delivered a most elaborate opinion, in which by unanswerable arguments and with impressive eloquence, he vindicates and demonstrates the paramount right of the jury to judge of the law, as well as of the fact, in all criminal prosecutions, and, especially, their right, in every prosecution for a libel, to judge of the intent, tendency, and truth of the publication. He rejects indignantly the opposite doctrine of Lord Mansfield and of some of his predecessors, as inconsistent with the principles of a free government, and repugnant to the spirit and to the ancient and true theory of the common law; and condensing the substance of the argument in a few words, he strongly, but justly observes, that "to deny to the jury on an indictment for a libel, the right of judging of the intent and tendency of the act, is to take away the substance, and with it the value and security of the trial by jury. It is to transfer the exclusive cognizance of crimes from the jury to the Court, and to give to the judges the absolute control of the press." It is doubtless remembered by us all, that the discussions in this celebrated case, led to the passage by the legislature of a declaratory law, the provisions of which are now incorporated into the Constitution of the State; and it ought never to be forgotten, that the doctrine which the Constitution of this State now sanctions, as essential to preserve

and perpetuate the freedom of the press, is that which Hamilton vindicated, and Kent judicially adopted and enforced.

There is another case, to which in connexion with the preceding, although far out of the order of time, it is here proper to refer, as illustrating his constant anxiety and fixed determination to maintain unimpaired the legal rights of the jury, in civil, as well as in criminal, cases. This case is that of *Firemen Ins. Co. v. Walden* (12 *Johns.* 514), in which, upon the opinion delivered by him as Chancellor in the Court of Errors, the judgment of the Supreme Court was reversed, principally, on the ground, that the judge below, on the trial, had given a positive direction to the jury upon a question of fact. He remarked in delivering his opinion, that he was far from wishing to restrain the judges of the Courts of Law from expressing freely their opinions to the jury on matters of fact; but that he felt it his duty to contend earnestly for the principle, that whenever the judge delivers his opinion to the jury on a matter of fact, he shall deliver it as a mere opinion, and not as a direction; so that the jury shall be left clearly to understand, that they are to decide the fact upon their own view of the evidence, and that the opinion of the judge is only interposed to aid them in cases of difficulty, or to inspire them with confidence in cases of doubt. He added, that he regarded this principle, and the distinction on which it was founded, as of inestimable value; as reaching to the very root and essence

of the trial by jury—an institution that he was anxious to preserve and hand to posterity in all the perfection in which it is now enjoyed.

It is to these cases, that a learned Senator and most accomplished scholar has lately referred, in an opinion delivered by him in the Court of Errors, and they drew from him an eulogy as just as it is splendid. Speaking of the deceased and of his labors, the learned Senator said, that “among all his eminent public services, and all his titles to lasting legal and literary honors, his uniform and zealous guardianship of the trial by jury, from the period of the great *Croswell* case in 1804, to the last hour of his judicial life, was conspicuous and remarkable. That, pre-eminent as he stood above all his contemporaries in the variety of his literary attainments, and the extent and depth of his legal science, he, above all the judges, was the foremost to confess that there was still something that books cannot teach—that the knowledge of the motives and springs of human action can be gained from every day experience better than from judicial rules, and that such rules are constantly liable to become harsh, technical, severe, and oppressive, without the correcting aid of that experience of men and life that the jury-box is found to supply.” (*Senator Verplanck's opinion in Cole v. White*, 26 *Wend*, 536.)

His opinion in the case of *Cortelyou v. Lansing* (2 *Caines' Cases in Error*, 200) deserves our special attention, from the fact that, although one of his earliest opinions, it displays, in an eminent degree, all

those qualities on which his judicial reputation was ultimately founded. It affords the clearest evidence of the maturity and soundness of his judgment, and of the extent, variety, and depth of his learning; and a more perfect specimen of a diligent, patient and thorough investigation of an obscure and perplexed subject, or an exposition of the law more skilfully conducted through authorities, conflicting or doubtful, to a most satisfactory result, our books will be searched in vain to supply. The positions that he establishes, are, that where a personal chattel is deposited as a pledge, and no time is limited for its redemption, the right to redeem is not extinguished by the death of the pawnor, but descends to his personal representatives—that the pawnee has no right to sell the pledge without a demand of payment and notice to redeem; and that where he proceeds to sell without such demand and notice, he becomes answerable for the value of the pledge. These positions are now elementary rules in that branch of the law to which they relate—they are now the acknowledged and settled law; but it was by the judgment of the Supreme Court in *Cortelyou v. Lansing*, that the law was settled; and it was by the opinion then delivered, that the rules which we now acknowledge, were drawn forth and extricated from the confusion and uncertainty, the chaotic state, in which the English cases and authorities had involved and left them. In this opinion, feeling the darkness and difficulty of the subject, he seeks light and aid from every source and

quarter from which light or aid could be derived or expected. He plunges into the recesses of antiquity, and reaches to the very infancy of the law "*incunabula juris*," which he traces from Glanville and Bracton, the earliest of our judicial classics, through our older reporters—Rolle and Dyer, Coke and Bulstrode—down to the latest decisions of the Courts in England. Satisfied, by this examination, that there were many *dicta* in the cases to which he had referred, that were founded on erroneous principles, and which departed from the true nature of a pawn, as understood by Glanville, and elucidated in the Roman law, it was to that inestimable system of civil jurisprudence (it is his language that I repeat) that he next directed his attention; and it was mainly from the Digest and Code, and from modern civilians—Domat, Huberus, and Perezius—that he derived the wise and equitable rules that the Court finally adopted.

Passing over many of the intermediate cases that I have collected, we arrive at the memorable proceedings for a contempt in the case of John Van Ness Yates (4 *Johns.* 354). To the zealous and angry controversy—political and personal—which many of us must well remember, in which this case had its origin, and which for a season it tended to aggravate, it is not my intention to refer. There are recollections connected with the subject, that I have no wish to revive. It is not my wish—"incedere per ignes suppositos cineri doloso"—to waken ancient fires, by treading on the deceitful ashes by which they are

now covered. But it is my duty to refer to the case, as containing, in the opinion of the Chief Justice, Kent, the most learned, lucid and satisfactory inquiry into the powers and authority of Courts of Justice to commit for contempts that our books can furnish, ~~or~~, at least, that my own researches have discovered. It is well known that the judgment of the Supreme Court in this case, by which the right of the Chancellor to commit Mr. Yates for the contempt with which he was charged, was affirmed, and the power of the Supreme Court, or of a single judge in vacation, to discharge him upon a habeas corpus, was denied, was subsequently reversed in the Court of Errors, and it was this reversal that led to the case that is next to be noticed.

Yates v. Lansing (5 *Johns.* 282). The plaintiff in this case sought to recover against the Chancellor of the State, the penalty given by statute for recommitting him, and causing him to be again imprisoned after he had been discharged by a judge upon a habeas corpus, and as all the facts were set forth in the declaration, the defendant demurred. Hence, the great question that arose upon the record was, whether a judge is, in any case, responsible in a civil suit, for an act performed by him in his judicial capacity. It is this great question that the Chief Justice, Kent, discusses in the opinion that he delivered, both upon principle and authority; and in none of his opinions, are the doctrines that he embraces, sustained and enforced with a more commanding power of reasoning

and of eloquence. He maintains and he establishes the principle, that a judge is never to be questioned in a civil suit, for performing or neglecting, or refusing to perform an official act in the exercise of his official powers, and in language of which all must feel the truth and power, he dwells upon the disastrous—the fatal consequences, that would follow the establishment of an opposite doctrine. His language is, that “whenever we subject the established courts of the land to the degradation of private prosecution, we subdue their independence and destroy their authority; instead of enabling them to retain the veneration of the public, we shall expose them to its contempt; we shall embolden the licentious to trample upon every thing sacred in society, and to overturn those institutions which have hitherto been deemed the best guardians of civil liberty.” This is indeed a strain “*che nell’ anima se sente*” that sinks into the soul and commands its inmost and deepest homage. The judgment of the Supreme Court in this case in favor of the defendant, like that in the preceding, was removed to the Court of Errors, but with a different result. The passions that the controversy had excited, had now in a measure subsided—reason resumed its sway, and the law regained its authority. To the honor of the State, by the voice of a large majority of the Court, the judgment was affirmed. (9 *Johns.* 395.)

I again pass over a number of intermediate cases to reach the last common law case that I propose to

notice. It is that of *Griswold v. Waddington*, which is reported in 15 Johnson 57, and in Error 16 Johnson 438.* It is a case of singular interest and importance, not only from the magnitude of the sum in controversy, but from the nature and difficulty of the questions that it involved. The great question was, whether a partnership that had subsisted between a British subject residing in London, and an American merchant residing in this city, was dissolved by the war that broke out between Great Britain and the United States in 1812; that is, whether the dissolution of the partnership was an immediate and necessary consequence of the war, without any reference to the wishes, or acts, of the parties themselves. The result of the controversy was an affirmative decision of this question. The deceased at this time, was Chancellor of the State, and it was in this capacity, that he delivered in the Court of Errors an opinion that, viewed in all its aspects, is perhaps the most admirable that he ever pronounced. It contains a more elaborate and thorough investigation into the consequences of a war, as affecting the relations, intercourse and contracts of the respective subjects of the hostile states, than is to be found in any other adjudged case, or in any treatise on the subject, in our own, or in any foreign, language. It is not merely a judicial opinion, but a most learned and ex-

* The observations on this case, and the parallel that follows, have been transferred in substance from a recent treatise on the Law and Practice of *Marine Insurance*, vol. i. p. 499.

haustive dissertation on this branch of national and municipal law, embracing a masterly and critical analysis of all the cases, and supporting every position by an irresistible force of argument and weight of authority. Like the famous treatise of Bynkershoek on Public Law, it ought not to be transiently consulted ; but by a diligent and repeated perusal, should be transfused into the mind of the student.

In this great case, the two greatest advocates that, during my own professional life, have shed reputation and lustre on the Bar of this State—John Wells and Thomas Addis Emmet—were both employed, and the tradition is that their speeches, on this occasion, were perhaps the ablest and most splendid of their forensic efforts. I shall not dwell upon my personal recollections of these eminent men ; nor upon the feelings that are forcibly recalled and revived by my remembrance of our personal relations ; but the attempt to render a slight tribute to their genius, in a sketch of their extraordinary and singularly contrasted endowments, I trust, will be pardoned. The digression shall be brief. It was by the power of lucid and vigorous reasoning, of weighty, impressive, irresistible argument, that John Wells was chiefly distinguished. As a logician, he was unrivalled ; surpassing all his contemporaries in accuracy of discrimination and soundness of judgment, in the choice, order and disposition of his topics, and in the purity, precision and vigor of his style ; and he was gifted with a natural dignity, in person, voice, and manner.

that gave almost a judicial authority to every sentence that he uttered. Nor was his eloquence merely argumentative—it was impressive and lofty in its tone, and when the occasion required, impassioned in its utterance; and when he denounced oppression and injustice, or exposed hypocrisy or fraud, there was a power in his moral rebuke, that all felt to be resistless. Thomas Addis Emmet, was an orator of a different class—rapid, vehement, fervid, brilliant in fancy, copious in diction, inventive and fertile in argument, rich in illustration; occasionally, he rose to the very heights of passionate and figurative eloquence, reminding us, there is no exaggeration in saying, of the great orators of antiquity, and of the wonders that their eloquence achieved. It may be true, that he did not always satisfy the judgment of his hearers; but invariably, he controlled their feelings, kindled their imaginations and extorted their applause. During the lives of these great advocates, public opinion was greatly divided as to their comparative merits, and the question, to which the meed of superiority, the palm of true eloquence, was justly due, was frequently debated—but it was agreed by all, that none of the resources that learning, genius and eloquence can supply, could be wanting to the client by whom the services of either were engaged.—“*Illud quidem certè omnes ita judicabant neminem esse, qui horum alterutro patrono, cujusquam ingenium requireret.*”

I resume the narrative, and return to him whose character and services I seek to illustrate. On the

25th day of February, 1814, his labors as a common law judge were terminated ; for on that day he was raised to the office of Chancellor of the State ; and none will doubt that it was proper to name the day that marks the most memorable era in the history of our jurisprudence. It was on that day that a Court of Equity was given to the State, such as the intricate and novel relations, the complex interests and the diversified and multiplying wants, of a highly industrious and commercial community demand, and the inadequacy of the common law to meet those wants and protect those interests, in all their extent, renders indispensable. A light visited us on that day to which the eyes of all were soon directed, and as it filled its orb and rose in the firmament, we all rejoiced in the new blessings that its splendor diffused. It is true, that previous to his appointment as Chancellor, a Court of Chancery existed, and had long existed, in the State. It had existed, going back to its origin, under our colonial government, for more than a century ; but with the exception of an increase of business, that was a necessary consequence of the increase of wealth and of population, the condition of the Court, at the close of this period, was nearly the same as at its commencement. During our existence as a colony, it was viewed by the mass of the people as an irresponsible and dangerous tribunal, exercising powers purely arbitrary, and masking oppression under the forms of law. It was an object of great and unceasing jealousy, and frequent attempts were

made in the Colonial Assembly to abridge, and even to abolish its powers. Although the framers of the Constitution of 1777, wisely determined to retain the Court, yet the sanction thus given to it by the Constitution was far from relieving it from the popular odium under which it had so long labored. It still continued to be regarded by the body of the people with great suspicion and distrust, and to the great majority of the members of our profession, to all indeed, except a few practitioners in this city and in the city of Albany, the principles it followed in the administration of justice, and its forms and modes of proceeding, were a mystery which they had no desire to penetrate. The almost necessary effects of this public distrust and professional ignorance, may be readily stated. The Court was exceedingly limited in its sphere of action; its powers, even those of the plainest necessity or utility, were exercised with doubt and hesitation—the relief that was sought was frequently inadequate when granted, and was frequently denied, when it ought to have been given, and a large portion of the rightful jurisdiction of the Court lay absolutely dormant. Nor had any efforts been made by preceding Chancellors to remedy these evils—to remove the prejudices of the people, or to dispel the ignorance of the Bar. No report of their decisions had been published, and so slight and transitory was the impression that they made that no memory of them seems to have been preserved; for it is a remarkable fact, that during the whole period

that the deceased presided as Chancellor, no judgment or even *dictum* of his predecessors was cited, or referred to, in the arguments before him.

It is, therefore, not extravagant to say that, although when he was appointed to the office of Chancellor, a Court of Chancery existed, yet, a Court of Equity, in the true sense and full significance of the term, was still to be created—and it was his peculiar glory that, by his genius, his energy, and his labors during the nine years that he acted as Chancellor, this necessary Court, in all the amplitude of its just dimensions, was created. During this period, by his development of the jurisdiction and powers of the Court, and by his application and elucidation of the principles by which the exercise of its powers is governed, he effected a change in the system and administration of Equity law, so extensive and entire, that with a single exception, it has no parallel in the history of the law. The single exception to which I allude, is familiar to the recollection of every lawyer. We all know that Sir Heneage Finch, afterwards Lord Nottingham, was the founder in England of Equity Law, considered as a system and science, and few can have forgotten the language in which Blackstone describes the character, labors, and success of this eminent person. “The Earl of Nottingham (they are the words of Blackstone that I quote) was a person of the greatest abilities and most uncorrupted integrity, a thorough master and zealous defender of the laws and constitution of his country, and he was endued with


a pervading genius that enabled him to discover and to pursue the true spirit of justice, notwithstanding the embarrassments raised by the narrow and technical notions which prevailed in the Courts of Law, and the imperfect ideas of redress which had possessed the Courts of Equity. The reason and necessities of mankind arising from the great change in property, by the extension of trade and the abolition of military tenures, co-operated in establishing his plan, and enabled him, in the course of nine years, to build a system of jurisprudence and jurisdiction upon wide and rational foundations." No apology can be necessary for this quotation. How striking is the coincidence ! how perfect the resemblance ! in the character, genius, and personal qualities of the men, in the previous state of the law, in the time that their labors occupied, and in the objects to which they were directed, and in the nature, extent, and vast benefits of the change which they accomplished !*

It is possible that some may be inclined to doubt the justness of this comparison, and to deny the truth of the praise that it implies. The task, it may be said, that the deceased was called to perform, and which he effected, was by no means equal in its extent and difficulty to that which Lord Nottingham accomplished. When he entered on his duties as Chancellor of the State, he was not required to lay

* This comparison was first suggested in an Address of the Bar, that is understood to have been written by the Hon. John C. Spencer, and which is published in the Appendix to the 7th volume of Johnson's Ch. R.

the foundations and raise the superstructure of a new and entire system; the system that he was bound to follow then existed; the jurisprudence of Equity had already been reduced to a science, and as such, had nearly attained its perfection, and in the numerous volumes of English Chancery Reports, the rules that were to guide him, and the precedents by which he was to be governed, were open to his examination and knowledge. In administering the justice of his Court, he had only to adopt and follow the principles that a succession of great Chancellors in England—Nottingham, Cowper, Macclesfield, Hardwick, and Eldon—had lucidly explained and firmly established. It is not to be denied that these observations are plausible, and apparently just; yet it is not difficult to show that their justice is only apparent. It is true that the principles of equity that he was bound to follow and meant to adopt, were to be found, in a rudimental state, in the Chancery Reports of England—but it is also true that the principles which Lord Nottingham adopted as “the wide and rational foundations” of the system that he built, previously existed, and were to be found in the jurisprudence of Rome, and of Continental Europe; and it is a certain fact, that it is chiefly and almost exclusively from these sources—the Roman and the Civil law—that he derived them. His great merits were the penetrating sagacity, the admirable prudence, and the comprehensive wisdom, that he displayed in the selection of these principles, and in adapting them to a form of

government and state of society, to institutions, laws, and manners, widely different from any that prevailed in the countries in which they had been originally established ; and it was exactly these qualities that were necessary to be displayed, and were in fact displayed, in transplanting to our own State the law of equity as it existed in England—the same duties were to be performed, and the same powers and resources of intellect and judgment and learning, were requisite to their discharge. There are many powers which are exercised by the Court of Chancery in England, that, as inconsistent with the principles or genius of our own government, were necessary to be rejected ; while, on the other hand, there are many subjects not within the province of the Courts of Equity in England, to which the jurisdiction of our Chancellor was necessary to be extended. The municipal law of this State, owing to the vast changes that have been made by our Constitution and by statute, differs widely from the statutory and common law of England, and it has rendered necessary the introduction of new subjects and new forms of equitable relief. The destruction of entails and their conversion into estates in fee, the alteration of the law of descents, the registry of deeds and mortgages, the new and more extensive remedies that have been given to creditors, and especially to judgment creditors and mortgagees, and the entire abolition of the Ecclesiastical Courts, have, in some respects, greatly enlarged the powers of our Chancellor, and have opened



new and abundant sources of an equity that the Chancellor in England has not the right or the means to administer. Hence, the system of equity law that now exists in this State, viewed in its just extent and proportions, is substantially a new structure, and the criticism that would detract from the fame of its builder and founder, may be safely dismissed, as futile and groundless.

The course that he followed after he entered on his duties as Chancellor, and by which the reputation and business of his Court were rapidly extended, remains to be stated. Within a year or two, the practical monopoly that a few counsel had long enjoyed was effectually broken up, and the number of those who practised in his Court—the body of solicitors and counsel—was greatly enlarged. This was partly owing to his personal exhortations and advice, but chiefly to the entire confidence that the leading members of the Bar throughout the State had learned to repose in him, and to the desire they generally felt of appearing in the Court in which he presided. The next and greatest obstacle to his success—the unpopularity of the Court—was also, but more gradually, overcome. The prejudice that regarded the powers of his Court as dangerous or useless, was unable to withstand the evidence that his labors and his example furnished. The entire devotion of his time and thoughts to the business of the Court—an assiduity unremitting—a patience unexampled—a celerity in the hearing and determination of causes

that was equally without a precedent—a courtesy that was extended to all—a probity that all admitted and revered—the laborious and thorough investigation that preceded his decisions, the general and entire satisfaction that those decisions gave, and the luminous opinions in which their grounds and reasons were explained, as they excited the admiration and drew forth the unanimous applause of the Bar, so they acquired to him, in the result, the boundless confidence of the public. The prejudices that once threatened the extinction of the Court, were succeeded by a rational and just conviction that the administration of justice, if left to the rules of the common law, would be lamentably defective, and that the cases are innumerable in which a Court of Equity is alone competent to afford relief.

† His decisions as Chancellor are embodied in seven volumes of Reports. The cases and opinions that these reports contain were selected by his own judgment; and I do not scruple to affirm, that they form a series of unequalled excellence, and to the Equity lawyer of inestimable value—they are the most precious treasure his library contains. None who reflect on the nature and amount of the instruction that these volumes supply, and on the method and style in which that instruction is conveyed, if able to make the comparison, will refuse to admit, that there is no series of Reports in England, or in the United States, that in these distinctive proofs of a superior and permanent value, resemble or approach them. It is cer-

tain that the office of Chancellor affords a much larger scope for a display of the highest judicial qualities than that of a judge at common law ; and accordingly it was in the discharge of his duties as Chancellor that all the judicial qualities—moral and intellectual, native and acquired—with which he was so pre-eminently gifted, were displayed, in their fullest lustre, with the most decisive effect, and the most beneficial result. Generally speaking, his opinions as Chancellor, although exactly such as those previously delivered by him in Chancery Cases in the Court of Errors, had prepared us to expect, are of a much higher order than those, on which his reputation as a common law judge, had been founded. They deal more in the investigation of principles ; they are more discursive and argumentative ; more scientific and lucid in arrangement ; more sustained, dignified and impressive in style—they embrace a far larger variety of topics, and these topics are not narrow and technical, but are drawn from the general principles of our nature, and reach to all the relations and interests of civil society—and the learning that he employs to adorn, illustrate or enforce his views, is more various and recondite, and more elevated and classical in its tone and character. Each opinion, in cases of real importance, is an elementary treatise or dissertation upon that branch of equity law to which it relates ; a treatise that exhausts the law on the questions that it discusses, and leaves upon the mind of the reader a permanent conviction of the truth of the conclusions

that he adopts. When we consider these opinions, as a whole, we shall be greatly surprised at the extent and range of the subjects that they embrace. We shall find that they contain virtually the jurisprudence of equity; that there is scarcely a head or branch of equity law, especially of that which is most applicable to our own institutions and to the condition of our own society, that he has failed to expand or methodize, to enlarge or illustrate; or in relation to which the principles that he adopts, or the rules that he establishes, have not become our settled and permanent law.

It was my original design to have followed the same course in relation to his decisions in Chancery that has been followed in relation to those at common law, and to have justified, by a selection of examples the praise I meant to bestow; but this design my recent study of his decisions has forced me to abandon. I have found that so large was the number of important cases in which the opinions that he delivered are distinguished by all the qualities that I have ventured to attribute to them, that any selection to be made must be purely arbitrary. There was no principle to guide me in the choice; and I also discovered that it would be impossible to convey a just and adequate idea of the value of his opinions, if any were selected, so numerous and so important are the topics they embrace, without making a larger demand on your time and patience than I felt could be justified. I must therefore content myself with using a privilege,

that my age and experience may be thought to bestow, in the advice that I propose to give to the younger members of our profession who may now be present. That advice is : Make the volumes of Johnson's Chancery Reports your favorite and your constant study ; if you wish to extend and systematize your learning—if you wish to enlarge your powers of comprehension and to strengthen your powers of reasoning—if you wish to refine your taste and elevate your sentiments—if you wish to waken in your own bosoms a generous ambition to excel in the science that you cultivate—to reach that excellence of which a model shall be placed before you—study and meditate these volumes by night—study and meditate them by day—“ *nocturnâ versate manu, versate diurnâ.*”

There are however two cases to which for special reasons I feel it my duty to refer. To the first as containing his own explanation of the principles by which in the administration of equity he meant to be governed, and by which he was in fact constantly governed ; and to the second as leading to and justifying some observations on a question of the last importance, to which, it has seemed to me, that the immediate attention of the Judiciary and the Bar ought to be directed.

It is an ancient error—an error countenanced by the opinions of Grotius, Selden and Coke, and even of Lord Bacon—that the discretion of an equity judge is undefined and unlimited ; that he is not bound to the observance of any precedents, or of any general

and fixed rules ; but is at liberty to determine each particular case according to his own judgment of the equity that arises from its particular circumstances. In the case of *Manning v. Manning* (1 *Johns. Ch. R.* 529) this erroneous, and I trust now exploded doctrine, seems to have been advanced by the counsel for the defendants, who upon this ground urged the Chancellor to disregard the English precedents, and to adopt a rule, which in its application to the particular case, they insisted was more equitable than that which the English authorities had sanctioned. In reply to these suggestions, he said, in his opinion, that he would take that occasion to observe that he considered himself bound by those principles which were known and established as law in the Courts of Equity in England at the time of the institution of his Court, and would not presume to strike into any new path, with visionary schemes of innovation and improvement. That it would no doubt at times be very convenient, and perhaps a cover for ignorance or indolence or prejudice, to disregard all the English decisions as of no authority, and to set up as a standard, his own notions of right and wrong—but he would do no such thing. It was to the severe and more humble duty of laborious examination and study that, in his judgment, he was called ; that the system of equity principles that had grown up and become matured in England, was a scientific system, the result of the reason and labors of learned men for a succession of ages, and that it was the duty of his Court to apply

the principles of that system to individual cases as they might arise, and by this means, and by a series of decisions, endeavor to transplant and incorporate all that is applicable in the English system into the body of our own judicial annals—that an equity judge while engaged in the discharge of this duty, was not to blind his eyes against human knowledge, but was bound to examine the several authorities, whether ancient or modern, whether before or since the Revolution, whether foreign or domestic, that might tend in any degree to ascertain and explain, or illustrate, the points to be decided.*

The opinion that he delivered in the case of *Hicks v. Hotchkiss* (7 *Johns. Ch.* 303), contains observations to which I attach a peculiar importance on the paramount authority of the decisions of the Supreme Court of the United States, on all questions that properly fall within its jurisdiction, and upon the obligation of all State tribunals to follow and obey the decisions so pronounced. The proposition that the

* These remarks coincide substantially with the observations of Blackstone in his chapter on proceedings in Courts of Equity, 3 *Com.* p. 425, where he says, "that the system of Courts of Equity is a labored, connected system, governed by established rules and bound down by precedents," and in a subsequent passage, "that the systems of jurisprudence in the Courts of Law and Equity are now equally artificial, founded in the same principles of justice and positive law." Yet these observations are not easy to be reconciled with his own remarks in his introductory Discourse, where he says, "that as Equity depends essentially upon the particular circumstances of each individual case, there can be no established rules and fixed precepts laid down without destroying its essence." (Vol. I. p. 62.) This inconsistency is severely criticised by Mr. Tytler in his *life of Lord Kames*.

State Courts are equally supreme, independent and absolute in the consideration and decision of national questions, he rejects as wholly untenable, and justly observes that its adoption would lead to the subversion of all order and subordination. There must be somewhere (he remarks) in the organization of every political institution a paramount power, or there is no government. The Supreme Court of the United States on questions within its cognizance, is that power, and if the State Courts should undertake to disobey or elude its decisions, the consequences must be discord and confusion; and, in the result, a dissolution of the national compact.

Such were nearly his last judicial accents—and certainly, during his judicial life, he never uttered language that conveyed truths of wider and deeper import. The doctrine that these truths enforce, is essentially and vitally conservative—conservative of the true principles of our government, and of the integrity of our Federal Union; but the practical value of this doctrine will be greatly diminished, if not wholly lost, if we limit its application to the cases in which the decisions of the State tribunals are liable to be reviewed and reversed by the Supreme Court of the United States. In these cases, there is a very slight, if any, hazard of discord, confusion, or collision, since experience has proved that, whatever may be the reluctance of the State Courts, the ultimate decision of the Supreme Court will be enforced, and must be obeyed. But there are several classes of

cases in which the judgment of the highest State tribunal may be final in its nature, and yet may have proceeded on rules of law in direct hostility to those that the Supreme Court of the United States, in similar cases, had established or sanctioned ; and it is to these cases that the doctrine that imposes it as a duty upon the State tribunals to follow and obey the decisions of our highest national Court, must be extended and applied, if we wish to avoid the discord, confusion, and perilous uncertainty, that a permanent conflict in their decisions must otherwise of necessity produce. It is to these cases that the doctrine must be applied, unless we are to be placed in the unexampled and anomalous condition—a condition that seems to be inconsistent with the very nature of civil society—of having two opposite systems of law, conflicting rules of human action, prevailing at the same time, in the same community, applicable to the same subjects and transactions, and binding upon the same individuals. Nor is the course to be observed, in order to prevent this dangerous conflict, difficult to be stated. If the questions that the judges of a State tribunal are called to determine, belong to their own local or municipal law, it is their own judgment that it is not merely their right, but their duty to follow ; and the authority of their decisions, in such cases, is justly to be regarded, and we know, will be regarded, as supreme ; but if the questions to be decided are national in their character—if they belong to a law that is not municipal and local, but which pervades

the Union, such as the law of nations, and the general rules of commercial law—the decisions of our highest National Court, I am constrained to think, ought to be implicitly followed, as paramount in their authority, as binding on the conscience of judges, although not necessarily controlling their action. It is not my intention to apply these remarks to the existing state of our law. I do not propose to inquire, whether the conflict, that I earnestly deprecate, has not partially commenced ; but I have felt it my duty to avail myself of this public opportunity, to call the attention of our Judiciary, and of the Bar, to a question that, viewed in its principles and in its consequences, and, from its pressing and wide importance, demands to be considered by every American jurist and statesman.


Again I resume the narrative, and return to him who is its subject. In 1821, he was a member of the State Convention by which our second State Constitution was framed and submitted to the people. To the proceedings of that Convention, and the questions there agitated, it is not my intention to refer ; but it is right that I should bear my personal testimony to a fact, which, as evidence of the impression that his character and conduct had then made on the public mind, has a peculiar value. Notwithstanding the violence of the political struggle that preceded that Convention, and the heat of the controversies in which its members, when assembled, were daily engaged—and although the opinions that he avowed in debate, and sustained by his votes, were directly and

greatly adverse to those of a large majority of the body—yet there was not a member of that majority—I speak of those who took an active share in the debates—who failed to render a full tribute of praise to the surpassing value of his judicial labors, and to the unsullied purity of his judicial character. They all knew that his political opinions had at all times been strongly entertained, and very openly expressed; but his entire impartiality as a judge—his absolute freedom, in the discharge of his official duties, from any personal, political, or party bias, they all confessed and extolled. When I recall the suspicions that then prevailed, and the censure in which others were then involved, I doubt, whether a similar case is to be found in history, if we except the similar homage that was rendered by his contemporaries to the conspicuous integrity of Hale.

On the 31st of July, 1823, James Kent ceased to be the Chancellor of the State, not in consequence of his own wishes, nor in compliance with the wishes of the public, but by the requisition of a law that he was bound to obey. It is true that his judicial learning and his judicial wisdom had now attained to a maturity from which there was not the slightest reason to fear that they would soon decline. It is true that all the powers and faculties of his mind were in their highest state of vigor and efficiency—that his health and spirits were unbroken and unimpaired—that his capacity to labor was as perfect, his willingness to labor as strong, and his desire to benefit the public by

his labors as sincere and earnest as ever—but the day that has been named completed his sixtieth year, and the Constitution of the State, in effect, declared that from that hour he was incapable of discharging his official duties, and, on that ground, forfeited his office. The absurd injustice of this provision of the Constitution was then felt, as it is now confessed by all, yet its application in his case, notwithstanding the general and just complaints it then produced, will not now be considered as a subject of regret. Had he continued to be Chancellor of the State, the Commentaries on American Law would never have been written. As a Judge, and as Chancellor, he had done enough for his own fame, and for the interests and honor of his own State. It was to the whole Union that his services were now due, and were soon to be rendered.


On his final retirement from his official life, separate addresses were presented to him by the members of the Bar of this city, of the city of Albany, and of the general Bar of this State, expressing their veneration, gratitude and personal attachment, their deep sense of the value of his judicial labors, and of the loss, that the public sustained, in their forced termination. These addresses in their sentiments and style reflect great honor on the character and feelings of the Bar. They are all of them admirably written; and they contain a tribute to the merits of him to whom they are directed, as just and ample, as cordial, affectionate and eloquent, as public gratitude has ever rendered to a public benefactor.



In the account that I have given of the judicial life of the deceased, it is upon his intellectual powers and attainments, and upon his intellectual labors and their results, that I have chiefly dwelt. I have omitted to speak of those personal qualities that so peculiarly endeared him to the affections of the Bar. That omission was intentional, but shall now be supplied. The Bar of the State shall now speak—it is their united testimony that shall now be given; and as the words in which it is conceived came directly and warmly from the hearts of those by whom they were first uttered, so I doubt not that their power will be felt in the hearts of all by whom they shall now be heard. The address from which they are taken, after declaring the just pride that was felt by the members of our profession throughout the State in their right to claim him as a brother, proceeds to say: “That endearing appellation brings to our minds so many instances of personal kindness—so many scenes of delightful instruction—so many evidences of pureness and singleness of heart—such a uniform and uninterrupted course of generous, candid and courteous treatment, that we are unable to express the fulness of our feelings, and can only say that our affection for you as a man almost absorbs our veneration for you as a judge.” No addition can be made to praise and language like this. Who is there that can doubt its truth? Who is there that is not touched by its pathos? Who is there, I would add, whose grief at the loss we have sustained this language fails to renew?

The time that has already been consumed, and the limits I am bound to observe, forbid me to dwell with any particularity on the remaining incidents in the life of the deceased, and I shall therefore proceed rapidly to the publication of his Commentaries and the closing scenes of his life.

x In the autumn of 1823 he fixed again his residence in this city, where he continued to reside during the residue of his life. His objects in this removal were to resume, in this city, the practice of his profession as a chamber counsel; and, should circumstances favor the design, to open and establish permanently a school of law. It was with a view to this latter object that he accepted for the second time x the appointment of Professor of Law in Columbia College; and during the session of the College in 1824 he delivered in his official capacity a very extensive course of lectures, comprising nearly all the subjects that are embraced in his Commentaries, and including some—such as the rules of procedure and pleading in civil actions and the law of crimes and punishments—that his Commentaries wholly omit. He repeated this course of lectures in 1825; but after that year his labors as a professor, although he retained the office and title, were discontinued. The increase of his business as chamber counsel, and his desire by revising and enlarging his lectures to prepare them for publication, combined with the inadequacy of the encouragement that he had received, were doubtless the motives that induced and justified



his virtual abandonment of an office that he had so recently accepted, and with it the relinquishment of the design he had so long cherished of establishing a school of law, that, from the extent and liberality of the instruction to be given, should have a wide influence in elevating permanently the character of our profession. In the month of November, 1826, that portion of his lectures which he had then revised and enlarged was published, as the first volume of his Commentaries on American Law. At this time, owing to the extensive circulation of the Reports of this State, his fame as a jurist had been spread and was firmly established throughout the Union ; and in the Municipal Courts of each State, as well as in those of the United States, his decisions and opinions were constantly quoted and relied on as evidence of the existing law, and as such they carried with them an authority that was rarely disputed, or denied to be conclusive. He had therefore the strongest reasons to believe that the success of any work upon legal subjects that he might choose to publish would be certain, rapid, and extensive. Yet, when he gave to the world the first volume of his Commentaries, so far from feeling this confidence he had great and anxious doubts as to its reception. In fact, it was with great reluctance that he had determined on the publication at all ; and it was only by the urgent advice, and even importunity, of his friends that this reluctance had been overcome. These facts, singular as they may appear, are in truth an evidence not only of the gen-

uine modesty of his nature, but of the real superiority of his mind. Those who, in their literary undertakings, have formed the justest conception of the excellence that ought to be attained, have usually the liveliest sense of their own deficiencies. The ideal standard that was present to their own minds, they are conscious that they have failed to reach—and it is this failure, that they apprehend, will be apparent to the world. They forget that no such ideal standard exists in the mind of the public.

X When he published the first volume of his Commentaries, a second only was contemplated; but as he proceeded in his labors, he discovered that the limits he had prescribed to himself were far too narrow, and, in the result, four volumes instead of two were found to be requisite to the completion of his original plan. It was not until 1830, that the fourth and last volume was published. Since that period, there have been four successive editions of the entire work, the last of which is now exhausted. In each of these editions, considerable additions have been made to the original text, and some changes have been introduced. Some inaccuracies and subordinate errors were discovered and have been removed, but the character and merits of the work considered as a whole, are substantially the same as on its first publication.

The Commentaries on American Law, in addition to the masterly treatises on the Law of Nations, on the Constitutional Jurisprudence of the United States, and on the sources of our municipal law, that


are contained in the first volume, comprise the laws of Real and Personal Property, the law applicable to Domestic and Social Relations and to Corporations, the law of Contracts, of Bailments, of Principal and Agent, of Shipping, and Mercantile Law, in all their extent and in all their branches and subdivisions. The only subjects that are wanting to its systematic perfection as an entire body of the law, are the forms and rules of proceeding in civil cases, and the law of crimes and punishments ; and these, for very satisfactory reasons that he has himself stated, but which it is unnecessary to repeat, he was constrained to omit. The work, however, in its present form comprehends the entirety of the law considered as a science, since to procedure and to criminal law, in their present condition, that term cannot be justly applied. The Commentaries, as their title imports, and as their author designed them to be, are, in the widest sense of the term, a national work. They exhibit, not only the jurisprudence of the United States, as derived from their federal Union, but the municipal law, written and unwritten, of each individual State on all the subjects that the work embraces. The principles and rules of the common law applicable to each subject, are first stated and explained, and then all the changes that have been made in particular States by judicial decisions, or legislative enactment. The proper execution of this plan imposed on him as a necessary duty, a diligent study of the statutory law and of the adjudged cases in every State of the

Union ; and when we reflect on the manner in which this duty has been performed, and on the accuracy and fulness of the information that he has thus been enabled to furnish, it is a matter of just astonishment that he was able to complete a work of such extensive and minute research, within the few years, that were devoted to its preparation. It is the character of the Commentaries as a national work, and their masterly execution as such, that have stamped upon them a peculiar value. It is to these causes, that the extent of the influence which they rapidly acquired and now exert on the jurisprudence, not of a single State, but of all, must be ascribed. As a national work of admitted and controlling authority, they have a direct and powerful tendency to create and to preserve a uniformity in the laws and in the legislation of the respective States, and a necessary consequence of this assimilation of our laws, is to produce and perpetuate a unity in our national character. That unity is the firmest bond of the political compact that binds us together as a nation, and as such, is a constituent element and permanent source of our national prosperity and greatness.

The similarity in their titles, naturally suggests a comparison, between the Commentaries on American Law, and those of Blackstone on the Laws of England—yet, in reality, the two works differ so widely, not only in their plan, but in their mode of treating the subjects which they embrace, that a just comparison is difficult to be made. The first, second, and

third volumes of the Commentaries of Kent, are devoted to subjects, which although mostly included in the plan of Blackstone, he has either wholly failed to consider, or has treated in a very slight and superficial manner; while on the other hand, the third and fourth volumes of the Commentaries of Blackstone, and the larger portion of the first, treat of subjects that from the American Commentaries are wholly, and, from the nature of their plan, were intentionally excluded. In some respects, the merits of the authors, as displayed in their respective works, bear a striking resemblance. In the logical powers of analysis and definition and arrangement—in the talent of condensation—the power of compressing a vast fund of information within narrow limits, yet leaving on the mind of the reader a clear and strong impression of its import and value, they both, and perhaps equally, excel, and in these respects they both surpass all other juridical writers, that our language can boast. I would not venture to affirm that the admirable precision, the luminous brevity, and the idiomatic ease and elegance, that distinguish the style of Blackstone, have been reached, in the same degree, by his American rival—yet the style of the latter, although more diffuse, is just as perspicuous, and is equally pure; his diction, although not in all instances as select and appropriate, is more copious and varied, and he rises occasionally—both in sentiment and language—to a higher strain of eloquence than Blackstone, as it seems to me, has ever

attained. If we compare the works in respect to the value of the information that they convey, considered in its relation to the existing state of the law, the superiority of the American Commentaries is strikingly manifest. A very large portion of the learning that the volumes of Blackstone contain, is, in this country, obsolete or inapplicable ; while the principles and rules of law that the American Commentaries set forth and explain, are living truths of daily importance and constant application. The plan of Blackstone is indeed the most extensive, but it is imperfectly executed, and it embraces many subjects of subordinate use and value ; but the American Commentaries, although more limited in their plan, contain a full and elaborate discussion of every subject that they embrace, and the knowledge that they convey, is exactly that which every lawyer, as essential to the discharge of his duties, finds it necessary to acquire. I am very far from thinking or meaning to assert, that the labors of Kent have entirely superseded those of Blackstone, so as to render a study, in this country, of the Commentaries on the Laws of England, no longer necessary or expedient ; but I do not hesitate to affirm, that the utility and value of the Commentaries on American Law, both as a work of elementary instruction, and of consultation and reference, are far more certain, and far more extensive. They contain all the learning of real and permanent importance, that is to be found in the Commentaries of Blackstone, if we except that portion of his work




which relates to the English constitution and government, and they supply deficiencies that all the readers of Blackstone admit and regret. They are indeed exactly the work that the condition of our country and of the law, and the daily wants of its students and professors, had long demanded; nor would it be easy to define the extent, or limit the duration of the benefits, that have flowed, and must continue to flow, from its general reception, use and authority. It is now in the hands of every student, and of every practitioner of the law, and it ought to be in the hands of every legislator and statesman, and indeed of every man of cultivated mind and liberal studies. I find it difficult to quit a subject that has long and frequently engaged my attention, but, mindful of the limits to which I am restricted, I conclude with saying of the entire work, that vast, various, and complex, as are its subjects and topics, the knowledge of the author embraced, his mind comprehended them all; his masterly analysis and logical arrangement, have condensed them all into an harmonious whole, and he has illustrated and illuminated them all, by the varied graces of a pure and flowing and lucid and animated style. In the language that Paterculus applies to Cicero, "*animo vidit, ingenio complexus est, eloquentia illuminavit.*"

It is certain that even in the United States, the publication of the Commentaries on American Law tended to confirm and exalt the reputation of the author, as a learned and profound jurist; and it is

doubtless to this cause, that the European reputation that for several years previous to his death he had attained and enjoyed, must be chiefly ascribed. His Commentaries are now extensively known and studied in England and in Scotland—and of late years they have been quoted, not infrequently, both by counsel and by judges, in the higher courts of justice in England—and seldom, without a strong expression of the respect and deference to which the author and his opinions were entitled. The full justice that of late years has been rendered both in England and in Scotland to the works and to the merits of Kent and of Story, is a gratifying proof, that the highest minds in our own profession are wholly exempt from those illiberal and hostile feelings, that we are accustomed to impute to the English nation.

Our narrative has nearly reached its close. From the time of the publication of his Commentaries until his death, there are no incidents in the life of the deceased, that require to be specially noticed. His life, during this period, owing to the regularity of his habits and the equanimity of his mind, was, in a remarkable degree, uniform and tranquil. Temperance and exercise, were the sources of his unfailing and vigorous health. The activity of his mind was nourished by the variety of his reading, and its strength maintained by meditation and study. The revisal and enlargement of his Commentaries, and the preparation of his written opinions (for during this period, his opinions were sought from all quarters of the Union, and sought



not only by clients, but by counsel and judges) afforded him all the serious occupation that he required. He was happy in his family—happy in his friends—happy in his circumstances—and above all, happy in his own mind—and the happiness that he felt was communicated to all around him. His old age was not only venerable in its aspect but delightful in its influence—and it lacked none of the accompaniments by which age is blessed and honored. It has been remarked, with apparent surprise, that although his life, from his youth, was, emphatically, a life of severe and constant labor, exhausting meditation, and resolute self-denial, yet these habits had not the effect of impairing, in the slightest degree, the cheerfulness, the vivacity, and even the gayety of his temper. When he mixed in society, instead of being gloomy, silent or reserved, he was uniformly lively, social, affable, communicative ; but these facts, far from justifying surprise, are in perfect accordance with a primary law of our moral being. Experience proves, that a constant and willing compliance with the demands of duty, and a strenuous employment of the means by which alone our fallen nature can be redeemed, purified, and ennobled, are a perennial source of cheerfulness and joy—and it is not at all surprising that the joy of an inward peace, is manifested in the overflowings of a kind and sympathetic gayety—a gayety, that so far from diminishing the influence of wisdom or virtue, lends to each a peculiar and most attractive

charm ;—and this charm was felt by all who approached him.

Hitherto nothing has been said of the religious views and character of the deceased. It is a topic that I approach with great diffidence, but which it is evident must not be wholly omitted.

There is no reason to suppose that the religious impressions of his youth were ever effaced. A deep reverence of the Deity was then implanted in his mind—and this sentiment, it may be regarded as certain, continued to influence his thoughts and his actions ; but it must be confessed—nor is it at all necessary to conceal the fact—that it was only during his later years, that he attained to a maturity of faith in the Christian Revelation. It is not meant that at any time he had rejected Christianity—that he was at any time an unbeliever in the ordinary sense of the term—or that his belief was merely traditional—the mere remembrance of the lessons of his childhood. After he had arrived at years of reflection, he examined and studied the evidences of Christianity with diligence and with candor—and as a necessary result of an inquiry so conducted, he had acquired a rational and full conviction of the authenticity and genuineness of the writings in which Christianity is revealed, and of the truth of the facts on which it is founded. But there is frequently a long interval between the assent of the understanding to the historical evidences of Christianity, and the entire and cordial reception of

its humbling, yet glorious truths ; and he was detained for several years, in an intermediate state, by those speculative doubts by which the minds of moral and thoughtful men are so often disquieted—doubts, which there are strong reasons to believe, (the observation is not my own,) are the peculiar trial to which such men, in the order of Providence, are called to endure. Humanly speaking, it was by the frequent and meditative perusal of that invaluable work, the *Analogy of Butler*—(a work in which the absolute futility of all the speculative objections that have ever been urged against the truth or doctrines of Christianity is conclusively shown—) that his mind was delivered from its perplexities and brought to that state of acquiescence and submission, in which he finally and joyfully rested. During the last year of his life, he became a communicant in the Protestant Episcopal Church—and the circumstances that then attended the administration of the Holy Sacrament, are a true and beautiful illustration of the spirit of the religion that his affections, as well as his understanding, had embraced. The sacrament was administered to him and to his wife in their own house ; and two of their ancient domestic servants—both of African descent—knelt with them, at the same time, at the same table, and professing the same faith, partook with them of its sacred symbols. He had been a member of the Protestant Episcopal Church for several years previous to this time by his attendance on its public worship, and he became so from a deliberate preference for its liturgy and forms of worship ; but it is my

duty to add that he never adopted those views of its distinctive character, and paramount claims, that usually prevail among its members.

And here I close my review of the life and labors of the deceased ; and I have utterly failed in its purpose, if any further observations can be requisite to convey to your minds the impressions I have desired to make. I have utterly failed, if from the facts that have been stated, you are at any loss to form your own judgment of the nature, extent and value of his public services, or of that rare union of the choicest gifts and endowments of the intellect and of the heart, of learning and of temper, by which he was enabled to render them. For myself, when his character as developed in the narrative that has now been given, rises before me, in all its integrity and truth—its nobleness and purity—and when I reflect on the magnitude of his labors and upon their vast and most beneficial results, I feel emboldened to say—and I feel assured of your sympathy in saying—that great as our country is, in all the elements of a just renown, and illustrious as its annals have become by the labors and by the exploits of statesmen and of heroes, it may yet be doubted whether, hitherto, it has produced a man more worthy of its entire veneration, gratitude and love, than him, whose services to his country and to his race, we are this day met to commemorate.

“ *Regio.*”

“ *Rebus optima bonis, multa munita virum vi,
Nil tamen hoc habuisse viro præclarius in se,
Nec sanctum magis, et mirum carumque videtur.*”



A few words remain to be said. It was only during the last year of his life, that his bodily health began to exhibit symptoms of failure and decay. Until then his complaints had been slight and transient, and apparently had no effect in impairing the vigor of his constitution ; but during several months previous to his decease, his sufferings from disease were almost continual, and at times exceedingly severe. But his sufferings, great as they were, left the powers of his mind wholly unaffected, and in the intervals of pain that were allowed him, he returned with his usual alacrity to his usual studies and pursuits.

The fatal termination of his malady had been long foreseen by many of his friends, and probably by his family ; but his own mind was seldom depressed, nor were his hopes of a final recovery abandoned, until within a few days, perhaps hours, of his decease. Of the grief in which his death, although not unexpected, plunged his family, I must not speak. That grief is now moderated, but it must continue, during their lives, a source of mournful and tender recollections. Nor was the grief that his death occasioned confined to his family—it was shared and deeply felt by all the friends who had been privileged and accustomed to enjoy his society, and I trust, I shall be pardoned for referring to myself as included in that number. For several years previous to his death, I had lived with him in habits of frequent intercourse, and on terms of cordial intimacy ; and during a period of my own life in which my mind was oppressed with un-

sual cares, and harassed by multiplied anxieties, it was from him, from his society, his conversation, and his example, that I derived consolation and support and strength and courage and hope. It is not strange, therefore, that I have felt, and must continue to feel, that his death has left a chasm in my social relations, that, at my age, I can never hope to supply. But why speak of my personal feelings? It is by all of us that his loss is felt—it is by all of us that his death is deplored. He was the friend and father of us all, and we all feel that it is our right and our duty to mourn

“Our father, friend, example, guide, removed.”

But while we mourn his death, let us rejoice that he has lived. While we deplore his loss, let us rejoice that his labors and his works survive him. His life was transitory—it has passed from the earth—its benefits to us, to society, and to the world, are still here—they are permanent and imperishable.

MODERN ENGLISH LAW BOOKS,

Imported and for sale by D. Appleton & Company.

SMITH, J. W.	The Law of Contracts, in a Course of Lectures delivered at the Law Institution. With Notes and Appendix by J. C. Symons, Esq.	1 vol. 8vo.	\$3 75
TYRWHITT, R. P.	A Summary of the Law of Modern Pleading.	1 vol. thick 12mo.	7 00
BURGE, WM.	Commentaries on the Law of Suretyship.	1 vol. 8vo.	5 00
GRANT, HARDING.	The Practice of the High Court of Chancery. Fifth enlarged edition, 2 vols. 8vo.		11 00
WHARTON, J. J. D.	The Law Lexicon, or Dictionary of Jurisprudence.	1 vol. 8vo.	10 00
SANDERS, GEORGE W.	An Essay on Uses and Trusts, and on the Nature and Operation of Conveyances at Common Law. Fifth enlarged edition. 2 vols. large 8vo.		9 00
HALE, WILLIAM H.	A Series of Precedents and Proceedings in Criminal Cases, to which is prefixed an Introductory Essay.	1 vol. 8vo.	4 50
CHITTY.	Treatise on Pleading, and Parties to Actions. 3 vols. 8vo. Seventh edition, enlarged.		25 00
BISSET, ANDREW.	A Practical Treatise on the Law of Partnership; including the Law relating to Joint Stock.	1 vol. 8vo.	5 00
HOSACK, JOHN.	A Treatise on the Conflict of Laws of England and Scotland.	1 vol. 8vo.	3 00

SPEECHES, BIOGRAPHIES, &c.,

OF EMINENT ENGLISH LAWYERS AND STATESMEN.

GRATTAN, (RIGHT HON. HENRY.)	the Select Speeches of the. To which is added his Letters on the Union. With a Commentary on his Career and Character, by Daniel Owen Madden, Esq.	1 vol. 8vo.	2 00
SHERIDAN, (RIGHT HON. RICHARD BRINSLEY.)	the Speeches of the. With a Sketch of his Life. Edited by a Constitutional Friend.	3 vols. 8vo.	5 00
ERSKINE, (RIGHT HON. LORD.)	the Speeches of the, at the Bar, and in Parliament. With a Prefatory Memoir by the Right Hon. Lord Brougham.	4 vols. 8vo.	12 00
CAMPBELL, (LORD.)	Speeches of, at the Bar and in the House of Commons. With an Address to the Irish Bar as Lord Chancellor of Ireland.	1 vol. 8vo.	1 50
FOX, (THE RIGHT HON. CHARLES JAMES.)	the Speeches of, in the House of Commons.	1 vol. large 8vo.	6 00
THE MODERN ORATOR.	Containing the most celebrated Speeches of Chatham, Sheridan, Erskine, and Burke.	1 vol. large 8vo.	6 00
HUSKISSON, (RT. HON. WILLIAM.)	Speeches of. With a Biographical Memoir.	3 vols. 8vo.	6 00
BROUGHAM'S (LORD)	Political Philosophy and Principles of Government.	3 vols. 8vo.	6 50
—	British Constitution.	8vo.	1 00
—	Speeches (collected in 4 vols. 8vo.) published at \$14, reduced to		8 00
CAMPBELL, (LORD.)	The Lives of the Lord Chancellors and Keepers of the Great Seal of England, from the Earliest Times till the Reign of King George IV. 1st, 2d, and 3d series, complete in 7 vols. 8vo.		28 00
HARDWICKE.	The Life of Lord Chancellor Hardwicke, with selections from his Correspondence, Diaries, Speeches, and Judgments. By George Harris, Esq.	3 vols. 8vo.	12 00
PEEL.	Life and Times of Sir Robert Peel. By W. Cooke Taylor, LL. D.	3 vols. 8vo.	11 00
BELL, (Robert.)	Life of the Rt. Hon. George Canning.	1 vol. 12mo.	1 25
SIDMOUTH, (LORD.)	The Life and Correspondence of the Hon. Henry Addington, First Viscount Sidmouth. By the Hon. George Fellow, D. D., Dean of Norwich.	3 vols. 8vo. with Portrait.	12 00

A COMPENDIUM OF MERCANTILE LAW.

BY JOHN WILLIAM SMITH.

FROM THE THIRD AND LAST ENGLISH EDITION.

**GREATLY ENLARGED BY THE ADDITION OF NOTES, AND
REFERENCES TO AMERICAN AUTHORITIES.**

By JAS. P. HOLCOMBE AND WM. Y. GHOLSON,
OF CINCINNATI.

One handsome 8vo volume. Price \$4.

The leading American authorities on all the subjects of the text have been incorporated in the references of the original work, and numerous notes inserted throughout the volume, pointing out the most important cases of conflict between the English and American Law. The volume forms a brief but comprehensive outline of Commercial Law in the United States, and supplies (it is hoped) a desideratum which has long been felt by the Merchant, as well as the Student and Lawyer.

OPINIONS OF THE WORK.

Extract of a Letter from the Hon. Ex-Chancellor Kent.

"New-York, June 19, 1847.

"The Book of Mr. Smith on Mercantile Law I think to be excellent and of high authority, and I beg leave to recommend it to patronage with my strong approbation.

JAMES KENT."

Extract of a Letter from the Hon. William Kent, late Prof. of Law in Harvard University.

"It is surely quite unnecessary to express an opinion on this well known work of the remarkable lawyer, whose premature death has been so sincerely deplored by the profession in America, as well as England.

"This edition appears to me to be the best that has appeared amongst us; and the Notes of the American Editors, Messrs. Holcombe and Gholson, are very well done, and will be found, by the American student and lawyer, useful additions to the original work.

WILLIAM KENT."

Extract of a Letter from the Hon. Rufus Choate.

"BOSTON, June 14, 1847.

"I had been somewhat familiarly acquainted with 'Smith's Mercantile Law,' from its first appearance; and well recollect that once citing it before Mr. Justice Story, he interrupted by saying, 'and a very excellent work it is.' This I suppose to be quite the universal judgment of the profession. I have not been able to examine the additions of Messrs. Holcombe and Gholson minutely, but I have read their notes on several distinct titles, and thought them excellent.

"The more authoritative of the American determinations are collected, and their doctrines, whether in concurrence with or in dissent from the English cases, are summed up with something like the brevity, terseness, and precision of style of the text itself.

RUFUS CHOATE."

Extract from the late Judge Story to the Author.

"I consider your work among the most valuable additions to judicial literature, which have appeared for many years. The 'Notes' are excellent, and set forth the leading principles of the various cases in the most satisfactory form, with an accuracy and nicety of discrimination, equally honorable to yourself and to our common profession. I know not, indeed, if any work can be found which more perfectly accomplishes the purpose of the author."

New-York Courier and Enquirer.

"It is hardly necessary to commend this work to the notice of the legal profession. The estimation in which it is held by the highest judicial authorities in England, the judgments of Courts expressed in conformity with its doctrines, and the high commendation bestowed upon it by our own Justice Story, communicated to the author shortly after its publication, are probably familiar to most American lawyers. It may, however, be well to remind mercantile men, and indeed all persons engaged in business pursuits, that this 'Compendium' will not only save them time and money, but afford them the means of judging precisely when they need legal advice. It is divided into four books. The first treats of Mercantile Persons; the second, of Mercantile Property; the third, of Mercantile Contracts; the fourth, of Mercantile Remedies: and under these general divisions the work is divided into chapters, treating fully of every case which can probably occur among business men, and containing the decisions of the highest courts in England and the United States. The editors have greatly enhanced the value of the work by a running commentary upon the most important American decisions, pointing out the cases in which there exists any conflict of authority, and directing attention to the new cases which have arisen for adjudication among us."

HOLCOMBE'S SUPREME COURT LEADING CASES.

D. Appleton & Company have recently published

A SELECTION OF LEADING CASES UPON COMMERCIAL LAW DECIDED BY THE SUPREME COURT OF THE UNITED STATES:

WITH NOTES AND ILLUSTRATIONS,

BY JAMES P. HOLCOMBE,

AUTHOR OF "LAWSON'S EQUITY JURISPRUDENCE," EDITOR OF "SMITH'S MERCANTILE LAW," &c.

One handsomely printed volume 8vo, of 500 pages. Price \$4.

The character of this volume may not be perfectly comprehended from its title containing merely the cases decided by the Supreme Court of the United States, upon the most important and interesting questions of mercantile law. A full report of each case is given accompanied by an elaborate note or essay, referring to the kindred English and American authorities, and quoting so much of the opinion and reasoning of other courts, as would illustrate, develop, and apply the principle of the leading case. The cases selected, have not been confined to those classes of subjects which are chiefly interesting upon the seaboard, and in the large commercial cities; but embrace the various branches of mercantile law, in the most comprehensive sense of that term, and which enter into every form of contract that can exist between men; as, for example, Agency, Partnership, Freight Contracts, Sales, Fraud, Payment, Usury, Bills of Exchange, and Promissory Notes.

When the Publishers consider the distinguished position of the Court whose decisions are reported, the magnitude of the particular causes, the eminence of the counsel engaged in the discussion, the fame which has been reflected upon the names of Marshall, Washington and Story, by the learning and ability which are displayed in these opinions, and the general desire to harmonize the conflicting decisions of the several States upon mercantile law, and to give our country a uniform, homogeneous, and national system, they cannot but regard the claim of this volume upon the attention of the profession, as imposing.

From numerous testimonials to the value of the work, and the fidelity and learning with which it has been prepared, they have selected the following recommendation of Chancellor Kent, the highest living American authority upon any question of law:

Extract of a Letter from the Hon. Ex-Chancellor Kent.

"NEW-YORK, June 19, 1847.
"The work of Mr. Holcombe, on Leading Cases on Mercantile Law, is a learned and useful publication. The cases collected are very important, and such as I have long studied; and his notes have added much to their education and value. In my opinion, every lawyer who means to be a master of commercial law, should possess, and have a thorough knowledge of the work."

JAMES KENT.

IV.

A POPULAR AND PRACTICAL INTRODUCTION TO LAW STUDIES:

AND

To every Department of the Legal Profession, Civil, Criminal, and Ecclesiastical.
WITH AN ACCOUNT OF THE STATE OF LAW IN IRELAND AND SCOTLAND, AND OCCASIONAL ILLUSTRATIONS FROM AMERICAN LAW.

BY SAMUEL WARREN, F.R.S.

Second Edition, entirely re-modelled, re-written, and greatly enlarged, with an American Index.

One handsome 8vo volume, of 750 pages. Price \$3 50.

IMPORTATION OF ENGLISH LAW BOOKS.

D. Appleton & Company, New-York,

Are prepared to execute (and respectfully solicit) special orders for the Importation of ENGLISH LAW BOOKS, by the single volume or otherwise. Having a branch of their house in London, Members of the Legal Profession may with confidence rely upon their orders being promptly executed on the most favorable terms.

AMERICAN LAW BOOKS supplied on the most favorable terms.







**THE BORROWER WILL BE CHARGED
AN OVERDUE FEE IF THIS BOOK IS NOT
RETURNED TO THE LIBRARY ON OR
BEFORE THE LAST DATE STAMPED
BELOW. NON-RECEIPT OF OVERDUE
NOTICES DOES NOT EXEMPT THE
BORROWER FROM OVERDUE FEES.**

CANCELLED

US 15681.17.5

A discourse on the life, character,

Widener Library

002720874



3 2044 086 393 162